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THE ATTAINMENT OF
STATEHOOD

EDITED BY

MILO M. QUAIFE

WISCONSIN HISTORICAL SOCIETY



Publications of the State Historical Society of Wisconsin

Collection Volume XXIX V. 24

Constitutional Series Volume IV V. 4, 4, 2

THE ATTAINMENT OF STATENHOOD

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EDITED BY

MILTON M. QUAIFFE

WISCONSIN HISTORICAL SOCIETY



"Your committee have for greater convenience submitted the following table of estimates:

Area of territory (square miles)	3,600
No. of townships	2,250
No. of school sections	9,000
No. of acres in one	360
Estimated number of acres in surveyed portion of territory	1,475,000
Average value of lb. at \$1.00 per acre	\$147,500
Interest on do. at 5 per cent	\$7,375
Estimated number of children between 4 and 16 years, living	250,000
50 per cent of population of 1870	125,000
Estimated cost of education per child	\$1.00
Whole cost of education per annum	\$125,000
No. of acres of university lands	10,000
No. of acres selected	25,000
No. of lb. to be selected	10,000
Estimated value of university lands	\$100,000

And he reported the following article:

EDUCATION AND SCHOOL FUNDS

WISCONSIN HISTORICAL PUBLICATIONS

COLLECTIONS, VOLUME XXIX

CONSTITUTIONAL SERIES, VOLUME IV

"Section 1. The legislature shall have the power to grant and direct the state expenditures, and to receive and disburse the same, and by and with the advice of the governor, to make and alter the same, and with such powers, duties, and emoluments, as may be necessary for the execution of the same."

"Section 2. The proceeds of all lands that have been or hereafter may be granted by the United States to this state for educational purposes (except the lands heretofore granted for the purposes of a university), and all moneys and the clear proceeds of all property that may accrue to the state by forfeiture or escheat, and all moneys which shall be paid as an equivalent for exemption from military duty, except in time of war, and the clear proceeds of all fines assessed in the several counties for any breach of the peace, law, and all moneys arising from any grant to the state where the purposes of such grant are not specified, and the five hundred thousand acres of land in which this state is entitled by the provisions of an act of Congress entitled 'An Act to appropriate the proceeds of the sales of the public lands, and to grant protection rights,' approved the fourth day of September, 1851, and also the five per centum of the net proceeds of the public lands lying within this state, in which the state shall become entitled on her admission into the Union (if Congress shall consent to such appropriation of the two last mentioned grants), shall be set apart as a separate fund, to be called the school fund."

"Section 3. The revenues arising from the school fund shall be exclusively applied to the following objects, to wit: first, to the support and maintenance of primary schools in each town and district, and the purchase of suitable libraries and school apparatus therefor; second, the residue shall be appropriated to the support and maintenance of county academies and normal schools, and suitable libraries and apparatus therefor."

"Section 4. The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as may be throughout the state; and such schools shall be equally free to all children between the ages of four and sixteen years, to whom the tuition shall be gratis. And no sectarian instruction shall be allowed in said schools."

1729554

"Your committee have for greater convenience subjoined the following table of estimates:

Area of territory (square miles)	83,065
No. of townships	2,300
No. of school sections	2,300
No. of acres in do.	1,472,000
Estimated number of acres in surveyed portion of territory	250,000
Average value of do. at \$3.00 per acre	\$750,000
Interest on do. at 7 per cent	\$52,500
Estimated number of children between 4 and 16 years, being	
20 per cent of population of 212,000	42,400
Estimated cost of education per scholar per annum	\$3.00
Whole cost of education per annum, based on above estimate	\$127,000
No. of acres of university lands	46,080
No. of acres selected	35,712
No. of do. to be selected	10,368
Estimated value of university lands	\$138,240

And also reported the following article:

EDUCATION AND SCHOOL FUNDS

"Section 1. The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct. The state superintendent shall be nominated by the governor, and by and with the advice of the senate appointed for such term of office and with such powers, duties, and compensation as shall be prescribed by law.

"Section 2. The proceeds of all lands that have been or hereafter may be granted by the United States to this state for educational purposes (except the lands heretofore granted for the purposes of a university), and all moneys, and the clear proceeds of all property that may accrue to the state by forfeiture or escheat, and all moneys which shall be paid as an equivalent for exemption from military duty, except in time of war, and the clear proceeds of all fines assessed in the several counties for any breach of the penal laws, and all moneys arising from any grant to the state where the purposes of such grant are not specified, and the five hundred thousand acres of land to which this state is entitled by the provisions of an act of Congress entitled 'An Act to appropriate the proceeds of the sales of the public lands and to grant preëmption rights,' approved the fourth day of September, 1841, and also the five per centum of the net proceeds of the public lands lying within this state, to which the state shall become entitled on her admission into the Union (if Congress shall consent to such appropriation of the two last-mentioned grants), shall be set apart as a separate fund, to be called the school fund.

"Section 3. The revenues arising from the school fund shall be exclusively applied to the following objects, to wit: first, to the support and maintenance of primary schools in each town and district, and the purchase of suitable libraries and school apparatus therefor; second, the residue shall be appropriated to the support and maintenance of county academies and normal schools, and suitable libraries and apparatus therefor.

"Section 4. The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as may be throughout the state; and such schools shall be equally free to all children between the ages of four and sixteen years, to whom the tuition shall be gratis. And no sectarian instruction shall be allowed in said schools.

"Section 5. Provision shall be made by law for the distribution of the income of the school fund among the several towns and cities of this state for the support of district schools therein in some just ratio to the number of children and youth resident therein between the ages of four and sixteen years.

"Section 6. Each town and city shall be required by law to raise annually for the support of district or primary schools therein a sum not less in amount than one-half that received by such town or city respectively, from the income of the school fund, to be levied and collected as other town or city taxes are. And no appropriation shall be made from said school fund, to any city or town, for the year in which said city or town shall fail to raise such tax in manner aforesaid; nor to any school district for the year in which a school shall not be kept up at least three months.

"Section 7. When the population of any county in this state shall exceed twenty thousand in number, provision shall be made by law for the erection of an academy in such county, with male and female departments, and a normal school department for the education of teachers for primary schools.

"Section 8. Provision shall be made by law for the establishment of a state university at or near the seat of state government, and for connecting with the same from time to time such colleges in different parts of the state as the interests of education may require. The proceeds of all lands that have been or may be hereafter granted by the United States to this state for the support of a university shall be and remain a perpetual fund, to be called the University Fund, the interest of which shall be inviolably appropriated to the support of the state university aforesaid.

"Section 9. The secretary of state, treasurer, and attorney general shall constitute a board of commissioners for the sale of the school and university lands, and for the investment of the funds arising from the same. Any two of said commissioners shall be a quorum for the transaction of all business pertaining to the duties of their office. Provision shall be made by law for the sale of said lands after the same have been appraised. And when the same shall be sold, and the purchase money shall not be paid at the time of the sale, the said commissioners shall take security for the payment of the sum that shall remain unpaid, in a mortgage upon the same, with seven per cent interest payable annually at the office of said treasurer. The said commissioners shall be authorized to convey said lands to purchasers by a good and sufficient deed, and to discharge any mortgages which may have been taken as security as aforesaid, when the sum due on the same shall have been paid. The said commissioners shall have power to withhold any of said lands from sale when they shall deem it for the public good and shall invest the moneys arising from lands that shall be sold as aforesaid and all other university and school funds in such manner as the legislature shall provide."

Said article was read the first and second times and ordered printed.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 5, article on boundaries, which was read the third time. The question was then put upon the passage of the article, and was decided in the

affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 53, negative 3; for the vote see Appendix I, roll call 84].

The convention then resolved itself into committee of the whole for the consideration of No. 4, article on banks and banking, Mr. Sanders in the chair.

The majority and minority reports of the committee, to whom the subject had been referred, were taken up and read.

Mr. Whiton moved to amend the majority report by striking out all after section 1. Mr. Whiton remarked at length upon this motion and in conclusion put two questions to the chairman of the committee on banking: first, whether he considered banking a proper and legitimate business; and second, whether, if it were a proper and legitimate business, it should be free to all, or restricted to a few.

[Mr. Whiton said he had not expected at this age of progression that a man would be found making a proposition calculated to confine the profits of banking to a few, but that whatever might be done he had expected that all classes of community would have equal privileges extended to them. But the proposition presented by the committee on banking, the chairman of which is one of the most ultra of progressives, had shown that he was mistaken. If any person can bank under any law which the provision authorizes, he must be one of the most powerful, rich, and influential persons. Under special acts, this must be so. Banking, if done at all, should be free to all classes. The first question is: Is it proper that anyone should be engaged in it? The committee think it is, but wish to confine it to a few. He had the strongest possible objection to this view of the subject. Were it not that the people had wrong views with reference to this matter, he should be opposed to all legislation on the subject whatever; but leave every man who pleases free to create banks. The issuing of bank paper having been authorized by legislative action, the people do not consider the bills as mere promissory notes, but as money; hence he thought there was necessity for some laws on the subject. He would ask the chairman of the committee two questions: First, is banking a legitimate and proper business? If so, is it not proper that it should be free to all who will give the requisite security? He should object to giving preference to a special few, to the exclusion of the many, as unwise, unjust, and improper. It would be giving all the privileges to the rich, the powerful, and the influential, who will be

able to logroll and force the measure through the legislature, and insure a majority of the voters in its favor.—*Tri-Weekly Express*, Jan. 13, 1848.]

Mr. Chase said he had no objection to answering the questions of his Democratic friend from Rock, but he had objections to going into a long debate on the subject at this time. To the first question he would answer decidedly in the negative. He did not consider banking, under any modification, a legitimate and honest business. The second question, therefore, would need no answer.

He would say a few words in relation to the motion of the gentleman from Rock to strike out all after the first section of the majority report. The proposition was an insidious one. The gentleman had given no intimation of what he would have inserted instead, and yet that was the very thing on which the vote to strike out should depend. Perhaps he (Mr. Chase) might be satisfied if nothing were to be inserted; the whole question would then be in the hands of the people; and he felt sure that public sentiment was right on this question. But he believed the gentleman had some scheme behind, and he thought he ought to let us know what he proposed, as it might have an important bearing upon the vote for striking out. The gentleman had harped about giving the privilege of banking to the poor. It was sheer sophistry. Banking was no business for the poor and was never intended to be. The gentleman's remarks were evidently thrown out only as a feeler. This indirect way of attack was unfair. Let the gentleman show his hand; let him bring forward a better section, and we will all vote for it.

Mr. Whiton remarked further and in conclusion withdrew his motion.

The committee then rose and by their chairman reported the same back to the convention without amendment.

[Mr. Whiton said he had supposed that matters were referred to a committee to get an opinion on the subject referred. But such has not been the case in this instance. The gentleman says it is unwise, improper, and dishonest to carry on banking, and yet in his report points out a way in which this dishonesty can be consummated. He now protested against the whole of his report. Mr. Chase thought the gentleman mistook either him or the spirit of

the report. He thought the sections left it entirely with the people, and he was not afraid to leave it there. On motion of Mr. Whiton the committee rose and reported the article back to the convention without amendment.—*Tri-Weekly Express*, Jan. 13, 1848.]

No. 4, article on banks and banking, was then taken up, when Mr. Whiton moved to amend the article by substituting the following:

"Section 1. The legislature of this state shall not have power to grant any special bank charters nor any special banking privileges whatever; but associations may be formed for banking purposes, under general laws, and conveying rights equally to every citizen.

"Section 2. Every such law, before it takes effect, shall after it has passed through the usual forms of legislation be published in at least one newspaper in each county of this state in which a newspaper is published, for ten weeks successively next preceding the next general election, and at said election shall be submitted to a vote of the electors of this state, and shall be approved by a majority of the votes cast on that subject at said election, which votes shall be ascertained, canvassed, and returned in such manner as the legislature may provide.

"Section 3. The stockholders in every bank and banking association shall be made individually liable to the amount of their stock therein for all its debts and liabilities during the time of their holding the stock and for the term of six months after they shall have transferred the same. And in case of the insolvency of any such bank or association, the bill holders thereof shall have preference in payment over all other creditors of such bank or association.

"Section 4. The legislature shall provide by law for the registry of all notes and bills put in circulation as money and shall require ample security for the redemption of the same in specie.

"Section 5. The legislature shall not have power at any time to authorize any bank or banking association to suspend specie payments.

"Section 6. Any law passed under the provisions of this article may be amended or repealed in such manner as the said law shall enact and in no other manner whatever."

[Mr. Whiton moved as a substitute for the whole the article which had been submitted in the minority report of the committee on banks and banking. He considered the substitute proposed much better than the article submitted, although it might not be perfect. Both articles assume that banking is a proper business; and the chairman who reported them cannot deny that it is proper and legitimate. One confines the business to a few; the substitute leaves it open to all who wish to go into it. Is not then the substitute the most in accordance with the enlightened spirit of the age? He thought there could be no comparison made between the two propo-

sitions which would not result in favor of the substitute. By the article as it stands the people have not the entire control over the matter; they can only grant the privilege of banking to whom the legislature please. If the substitute prevails and becomes a part of the constitution and a law is passed under it, the people can confer the power of banking on any or all persons who can give the requisite security. Can gentlemen with this view of the case decide in favor of the majority report? If they do, he should be extremely curious to know their reasons for such decision. A legislature will not pass a law that will grant privileges under this general principle unless proper security be given. In either case the legislature will be satisfied that there will be no public loss. In one case, the people will have power to grant privileges only to a few; in the other, to everyone.

It is said that this article does not require sufficient security. The legislature may require any security they please—the article does not prevent it. The gentleman from Fond du Lac (Mr. Chase) thinks it immoral to go into banking; yet he is willing to give people power to go into it. He would ask the gentleman if he was willing to limit this power to a few. The gentleman must go contrary to all his principles of democracy, morality, right, and justice, if he does.—*Tri-Weekly Express*, Jan. 13, 1848.]

Mr. Whiton remarked at considerable length in support of the motion, contending that the whole matter ought to be left in the hands of the people and that they should not be tied down to the mere privilege of ratifying what had been submitted to them by the legislature.

Mr. Chase, in reply, said that the whole matter by his proposition would be left in the hands of the people. The legislature would have the power only to put the question in proper shape—to submit a definite, tangible proposition. What would the proposed substitute submit to them? They could never know what, and they might be surprised at any time to find themselves saddled with a rotten banking system without ever knowing how they came so. But he thought the whole question as far as bank men were concerned turned on one point, and that was, which was the easiest and most feasible way for them to get their system established. They know that no banking system can confer equal rights on all the people. They know, too, that when a special bank charter is submitted to

giltimate one which produced nothing to the country, and banking

them, they will see what it is and vote it down. The bankites imagine—and very reasonably—that a general banking law is easier to obtain than special charters; for then the whole race of speculators and sharpers throughout the country would unite for one general, simultaneous effort, whereas in the latter case the effort would be divided and different interests might clash. That is the reason for this movement for a general banking law. He was surprised to hear the gentleman base his argument for a general banking law on the ground of equal rights—to speak of democracy and progress in this connection. He had supposed it our duty in the fundamental law we were forming to guard the people against the hasty, injudicious, or corrupt action of their legislators—to guard them from monopoly in any event. For that reason he had coincided with the majority report, that if any special privileges were to be granted they might be granted by the people directly, not by officeholders.

Mr. Rountree said there were two propositions before the convention, and the question was which should be adopted. He was opposed to the adoption of that of the minority of the committee and would state some of his reasons. The gentleman from Rock had argued that the age of special privileges was past and therefore we should establish a system of general banking. Now the very idea of banking in any form implied special privileges, and these special privileges were the only temptation for anybody to enter into it. If we establish free banking, none but men of capital can go into it, unless, indeed, we so fix it that men can bank without capital; and that would be worse still. Free banking, then, was merely giving special privileges to capitalists and speculators in general, instead of confining them to a few. Did democracy require this? According to his view, both democracy and sound policy required that banking should be restricted and discouraged as far as possible. Did the gentleman think that banking created money value? That, certainly, was an opinion which belonged to another age. They might create rags—they might afford those engaged in it a means of enriching themselves, but they added nothing to the real wealth of a country. They only transferred money from the hands of the laborer to those of the speculator. The gentleman had said that if the business were a legitimate one, all men should be allowed to go into it equally. True—but he did not consider any business a legitimate one which produced nothing to the country, and banking

them, they will see what it is and vote it down. The bankers imagine—and very reasonably—that a general banking law is easier to obtain than special charters; for then the whole race of speculators and sharpers throughout the country would unite for one general, simultaneous effort, whereas in the latter case the effort would be divided and different interests might clash. That is the reason for this movement for a general banking law. He was surprised to hear the gentleman base his argument for a general banking law on the ground of equal rights—to speak of democracy and progress in this connection. He had supposed it our duty in the fundamental law we were forming to guard the people against the easily injudicious, or corrupt action of their legislators—to guard them from monopoly in any event. For that reason he had coincided with the majority report that if any special privileges were to be granted they might be granted by the people directly, not by officeholders.

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was of that kind. It was notorious that it was carried on for speculation merely. The expenses were small, and the profits enormous, and the people had to foot the bill in the end. It was peculiarly proper, then, that the people should be consulted, particularly before any institution of the kind could go into operation. If they should ever feel any urgent need of banks they would never be at loss for the means to create them. The system of free banking proposed by the amendment he regarded as the worst of all systems. It united the interests of all speculators and all who wanted to live without work, and brought their influence to bear at once and in concert upon a general law.

If the people want banks, the legislature can grant one for every county; and the article reported by the majority wisely provides that there should be but one submitted at once, so that there might be no combination. He was opposed to banks wholly; but if we must have them, he thought the people should have an opportunity to consider and mature them. The majority report provided that banks might be created after the people had had time to consider them. He thought that was as it should be. There was a disposition abroad to live without work, and he thought it should not be encouraged. It was not long since the whole West was flooded with irresponsible paper, to the ruin of all honest business and industry. We should take care that it should not be so again. If we established any system of banking we should incorporate in it the individual liability principle, else we have no protection against dishonesty. The general banking system proposed throws open the door to all fraud and iniquity, and he hoped that that at least would not be adopted. It had been said last spring, when the old constitution was before the people, that there was danger if it was rejected that a system of free banking would be established in the next; that the eastern portion of the territory would make a desperate push for it and so wished to defeat the constitution to afford them the opportunity. The people of the West had said that they could not believe it—that the day had gone by when anybody would dare do so; and so they voted against the constitution on account of other defects it contained. But he was sorry to find that these prophecies were true; that the very movement was now being made; and he really feared from remarks he had heard that it might find some favor with the convention. If so, he should regard it as the most

was of that kind. It was notorious that it was carried on for speculation merely. The expenses were small, and the profits enormous, and the people had to foot the bill in the end. It was peculiarly proper, then, that the people should be consulted, particularly before any institution of the kind could go into operation. If they should ever feel any urgent need of banks they would never be at loss for the means to create them. The system of free banking proposed by the amendment he regarded as the worst of all systems. It united the interests of all speculators and all who wanted to live without work, and brought their influence to bear at once and in concert upon a general law.

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disastrous thing that could possibly happen. The deep interest he felt in it, both personally and as a representative of the West, had impelled him to speak against it now, and he would continue to oppose it in every way in his power.

Mr. Judd moved to amend the amendment by substituting the following:

"Section 1. There shall be no bank of issue authorized or permitted within this state, except such as are authorized by the following sections of this article.

"Section 2. No law authorizing banking in any manner or under any pretense whatever shall ever be passed by the legislature of this state, unless the said law be general in its terms and convey rights equally to every citizen. Such law shall not take effect unless it shall have been submitted to the electors of this state at a general election and shall have received a majority of all the votes cast at such election upon that subject.

"Section 3. The stockholders of every bank so to be authorized shall be individually liable to the full amount of their stock therein for all its debts and liabilities during the time of their holding such stock and for six months after they shall have transferred the same. And in case of the insolvency of such bank, the bill holders thereof shall have preference in payment over all other creditors of such bank.

"Section 4. The legislature shall not have power at any time to [authorize any bank to] suspend specie payment.

"Section 5. Any law authorizing banking, passed in pursuance of the provisions of this article, may be altered, amended, or repealed in the same manner as it was adopted."

[Mr. Judd believed the people demanded some expression on the subject of banking. He believed the old constitution was rejected mainly on account of that article. He thought it was doubtful whether a majority of the people were in favor of banks at all; and he thought that special charters were not best calculated to meet the interests of the people. The report of the committee holds out to the people the idea that they may have banks and yet fixes it so that they cannot possibly obtain them. He did not believe that the day had arrived when we should go back to special charters. They are monopolies with which the masses of community can have nothing to do. They overturn the great principle of equality. He was himself opposed to banking in any form, but he was aware that many of his friends thought differently, and he was willing to let the people decide whether they would have banks, and he was willing to abide the will of the majority. No bank should be other than general in its character and free to all alike. He was willing that

everything in reference of the state should be left to the people; and in their decision he would abide. He hoped the day would never come when a majority of the people shall be in favor of having any banks. He had seen more gold and silver in this territory in three months than he saw in a business of twenty-five years in the state of New York.—*Tri-Weekly Express*, Jan. 13, 1848.]

Mr. Judd spoke upon this amendment at considerable length.

Mr. Lovell said he was first inclined to regard the substitute of the gentleman from Dodge (Mr. Judd) as identical with the amendment proposed by the gentleman from Rock (Mr. Whiton). In this it seemed he was mistaken. Before examining the points of difference, he would canvass a little the position assumed by the gentleman from Dodge in the most extraordinary of the extraordinary speeches which had yet fallen from that gentleman—a sort of mermaid speech—amphibious—half human, half fish. In the outset he read the chairman of the committee on banks a furious lecture upon consistency and then proceeded to state the depth and breadth of his hostility to banking in every shape and phase. This speech was made in support of a proposition for the creation of the very creature of his abhorrence, wildcat banking in its wildest form, without constitutional check or restriction. The chairman of the committee on banks avowed his hostility to banks, and the proposition emanating from the committee, all here concede, would render banking impossible. The convention might determine whether the remarks of the gentleman from Dodge, coupled with his substitute, were more coherent or consistent than the object of his denunciation. After such a lecture he was indeed surprised to find such important differences in the propositions and that those differences were in favor of an easily obtained and but partially restricted system of banking. He observed that both the amendment and the substitute contained the words “convey rights equally to every citizen.” Did these words mean anything? Or were they unmeaning forms to catch votes? If they meant anything, the key word was “citizen.” Perhaps the gentleman from Dodge intended it as an inducement to foreigners to become citizens! Was that it? The proposition now under consideration provided that a majority only of the votes cast on the subject should be sufficient to engraft a banking system into the constitution. I prefer the original proposition in this respect. The power of making money and regulating

the currency is among the highest prerogatives of sovereignty and the sovereign in this country. The people should not put that control out of their reach, at least not without the vote of a majority of all the votes cast. The original report seems to be preferable in another view in providing that the stockholders shall be individually liable for all the debts of the corporation. The gentleman from Dodge (Mr. Judd) in opposing this principle said that there would be no banking under this provision. Now it would seem that this ought to be well received by so bitter an opponent of all banks—but no! The gentleman says that nowhere under heaven does such a system prevail. Now this was the Scotch system precisely as he (Mr. Lovell) understood it.

Mr. Judd explained.

Mr. Lovell understood the gentleman to say as he explained, also. "No prudent man would operate in banking with such a provision," said the gentleman. Why, the Scotch people were esteemed the most prudent on the earth! That this restriction and that guard proposed from time to time for the last twenty years had always been met with the cry that no prudent man would undertake the business. The restrictions and guards have prevailed, the cry subsided, and the business proceeded as before. Whenever powers over this subject are yielded up to private corporations and associations it should be only upon condition that the whole community should be fully secured. He did not agree with the bank committee, however, on one subject. He thought that general laws for corporations were to be preferred in every case where they could be attained by such general laws. It was a part of his instructions, and his feelings concurred with his instructions to vote for general laws and "no monopoly." He would vote against the substitute, endeavor to perfect the amendment of the gentleman from Rock, and if reasonably perfected and restricted, would give it his vote.

Pending the question on the adoption of said amendment, Mr. Beall moved that the convention adjourn. And the question having been put upon the said motion, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 32, negative 26; for the vote see Appendix I, roll call 85].

The convention adjourned.

the currency is among the highest prerogatives of sovereignty and the sovereign in this country. The people should not put that control out of their reach, at least not without the vote of a majority of all the votes cast. The original report seems to be preferable in another view in providing that the stockholders shall be individually liable for all the debts of the corporation. The gentleman from Dodge (Mr. Judd) in opposing this principle said that there would be no banking under this provision. Now it would seem that this ought to be well received by so bitter an opponent of all banks—but not! The gentleman says that nowhere under heaven does such a system prevail. Now this was the Scotch system precisely as he (Mr. Lovell) understood it.

Mr. Judd explained.

Mr. Lovell understood the gentleman to say as he explained, also. "No prudent man would operate in banking with such a provision," said the gentleman. Why, the Scotch people were esteemed the most prudent on the earth! That this restriction and that guard proposed from time to time for the last twenty years had always been met with the cry that no prudent man would undertake the business. The restrictions and guards have prevailed, the cry subsided, and the business proceeded as before. Whenever powers over this subject are yielded up to private corporations and associations it should be only upon condition that the whole community should be fully secured. He did not agree with the bank committee, however, on one subject. He thought that general laws for corporations were to be preferred in every case where they could be sustained by such general laws. It was a part of his instructions, and his feelings concurred with his instructions to vote for general laws and "no monopoly." He would vote against the substitute, endeavor to perfect the amendment of the gentleman from Rock, and if reasonably perfected and restricted, would give it his vote.

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The convention adjourned.

TUESDAY, JANUARY 11, 1848

Prayer by the Rev. Mr. Read.

Mr. King moved that the reading of the journal be deferred, which was agreed to.

Mr. Lyman presented two petitions from the inhabitants of Dodge County, praying that homestead exemptions be secured to citizens by the constitution. The petitions were read and referred to the committee of the whole. Mr. Beall presented a petition from sundry inhabitants of Racine County on the same subject, which was also referred to the committee of the whole.

Mr. Fowler, from the select committee to whom that subject had been referred, made the following report, to wit:

"The committee on incidental expenses under the following resolution, to wit: 'That the committee on expenses be directed to ascertain and report to the convention as soon as practicable the amount of stationery which has been furnished for the use of the convention, giving distinctly the items of stationery furnished, and the cost of the same,' report that from a statement made by the superintendent of territorial property, he has furnished to each member the following items of stationery, viz.:

1 Congress knife	\$1.37½
1-2 ream Jessup's letter paper	1.50
9-20ths Jessup's cap paper	1.50
2-20ths bank envelope	.45
1-20th bank envelope	.18¾
1-40th bank envelope	.13¾
1 cork inkstand	.04¾
1 wood inkstand	.08½
1 letter stamp	.15¾
1 wafer box	.01
1-10th lb. harp wax	.09
red tape	.03¾
1 paste cup	.04¾
Total	\$5.62½

"Respectfully submitted,

A. FOWLER, Chairman,"

Mr. King introduced the following resolution, to wit: "*Resolved*, That the convention will, on and after this day, hold evening sessions from 7 to 9 P.M." And the fifth rule having been first suspended for that purpose, the said resolution was adopted.

Mr. Case introduced the following resolution, to wit: "*Resolved*, That so much of the resolution adopted by this convention on Friday, the seventh day of January, as determines the per diem allowance of the secretary and assistant secretaries from and after the above date be rescinded." Mr. Case moved that the fifth rule be suspended for the [consideration of] said resolution, now, which was disagreed to.

Resolutions were introduced and read as follows, to wit:

By Mr. A. G. Cole: "*Resolved*, That the twentieth rule be and the same is hereby amended by adding to the same after the word 'thereto' in the last line

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1 Congress knife	\$1.37 1/2
1-2 team Jensen's letter paper	1.50
4-300ths Jensen's cap paper	1.50
2-300ths bank envelope	.45
1-200th bank envelope	1.84
1-400th bank envelope	1.38
1 cork inkstand	.04 1/2
1 pen inkstand	.08 1/2
1 letter stamp	1.84
1 water box	.01
1-10th lb. hard wax	.00
red tape	.03 1/2
1 glass cup	.04 1/2
Total	\$6.62 1/2

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Resolutions were introduced and read as follows, to wit:

By Mr. A. G. Cole: "Resolved, That the twentieth rule be and the same is hereby amended by adding to the same after the word 'therein' in the last line

the following words: 'but that no debate shall be had upon any such proposed amendment.'"

By Mr. Gifford: "*Resolved*, That a committee of three be appointed to ascertain and report the cost of printing the journal and sketches of debates for this convention and also to inquire into the expediency of providing for the sale of a sufficient number of the same to defray the cost of printing the journal and sketches."

Resolution No. 1, introduced by Mr. Case yesterday, was taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 3, introduced by Mr. Ramsey yesterday, was taken up.

Mr. Richardson said that he looked upon laws regulating the rates of toll as an infringement of the rights of individuals; so also with regard to laws regulating the interest on money. They were no more fit subjects of legal enactment than the amount of profit which men might derive from any other species of property. As the resolution called for inquiry into this matter, he hoped it would be adopted.

The question was then put upon the adoption of the same, and was decided in the affirmative.

Resolution No. 4, introduced by Mr. Harvey yesterday, was taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. Judd moved that the journal of yesterday be read, which was agreed to. The journal was then read and corrected.

No. 4, article on banks and banking, was then taken up, when Mr. Beall moved to amend the article by substituting the following: "Section 1. The legislature of this state shall not have power to pass any law, either general or special, conferring banking privileges; and all banking by any person or persons, association, company, or corporation is forever prohibited within this state. It is hereby provided that at the time when the votes of the electors shall be taken for the adoption or rejection of this constitution an amendment shall be submitted to the people of this state, upon which a separate ballot may be given by every elector, to be deposited in a separate box. And if at the said election a majority of all the votes shall be given in favor of said separate amendment, then it shall be a part of this constitution, in full force and effect, anything in the constitution to the contrary notwithstanding. Said amendment shall be as follows, to wit:

"Section 1. The legislature shall not have power to grant any special bank charters, nor any special banking privileges whatever, but associations may be formed for banking purposes under general laws.

"Section 2. The stockholders in every bank and banking association shall be made individually liable for all its debts and issues during the time of holding their stock and for the term of six months after they shall have transferred the same. And in case of the insolvency of any such bank or as-

sociation, the bill holders thereof shall have preference in payment over all other creditors of such bank or association.

"Section 3. The legislature shall provide by law for the registry of all notes and bills put in circulation as money. And every corporation or association shall deposit with the proper officer, to be designated by law, ample security for the redemption of its circulating notes and liabilities to the amount of the stock of such corporation or association, either in stocks of the United States or of some paying state of the United States. Such stocks, when so deposited, shall be appraised at their market value in the city of New York and shall be reappraised upon the same basis annually during the continuance of such corporation or association: *Provided*, Such stock shall in no instance be appraised above par.

"Section 4. The legislature shall not have power to authorize any bank or association to suspend specie payments; and such suspension by any bank or association shall dissolve the same.

"Section 5. The legislature shall limit the aggregate amount of bank notes to be issued by all the banks and associations which may exist in this state.

"Section 6. Any law passed under the provisions of this amendment may be altered or repealed in such manner as the said law shall have been enacted, and in no other manner."

Mr. McClellan moved to amend the amendment by substituting the following:

"Section 1. The legislature shall have no power to pass any act granting any special charter for banking purposes, but corporations or associations may be formed for such purposes under general laws.

"Section 2. Every such law, before it takes effect, shall be published in at least one newspaper in each county of this state in which a newspaper is published, for ten weeks successively preceding the next general election, and at said election shall be submitted to a vote of the electors of this state, and if approved by a majority of all the votes cast at such election shall become a law.

"Section 3. Every corporation or association shall deposit within the office of the secretary of state ample security for the redemption of its circulating notes and other liabilities, to the amount of the stock of such corporation or association, either in stocks of the United States or of some paying state of the United States.

"Section 4. That such stocks, when so deposited, shall be appraised at their market value in the city of New York and shall be reappraised upon the same basis annually thereafter during the continuance of such corporation or association: *Provided*, Such stock shall not be appraised above par.

"Section 5. That all notes on paper issued by such corporation or association to circulate as money shall be made payable in gold or silver coin on demand at the place issued.

"Section 6. No such corporation or association shall issue any notes or paper to circulate as money that are not registered and countersigned by the secretary of state; and no such corporation or association shall receive or put in circulation notes or paper of an amount exceeding the appraised value

of its stocks deposited on security; and if such stocks so deposited shall become depreciated, such corporation or association shall be required to make a further deposit of stocks to the amount of such depreciation.

"Section 7. The individual property of the stockholders in every such corporation or association shall be liable for all debts of such corporation or association.

"Section 8. The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person, corporation, or association issuing bank notes of any description.

"Section 9. In case of the insolvency of any bank, corporation, or association, the bill holders thereof shall be entitled to preference in payment over all other creditors of such bank, corporation, or association.

"Section 10. Any law passed under the provisions of this article may be amended or repealed in such manner as the said law shall enact, and in no other manner whatever."

Mr. Chase said that the great variety of amendments and substitutes which were proposed to the original article reminded him of nothing more forcibly than of a vase of Egyptian vipers, each striving to get his head above the rest. It was the duty of every member of the convention to beat down these heads. He had been amused by the number of amendments offered similar to one another, if not in detail, in substance. One gentleman yesterday submitted a proposition substantially the same as those now offered and enforced it with a long (he was sorry he could not say very able) speech against banks and banking. The only gist of his argument was, so far as it referred to his proposition, that it was preferable to the original article inasmuch as gentlemen would not take stock in banks created under the latter, but would be likely to do so in those created under the former. Yet he enforced such a proposition with an argument against banking! He could not but be reminded of certain words of the favorite bard of Scotland:

O wad some Power the giftie gie us
To see oursels as ithers see us!
It wad frae mony a blunder free us,
An' foolish notion.

He was also amused to see the friends of banks in the convention (for such they were, whatever they might pretend) so much mortified on finding that the committee did not bring in a report whose provisions should take away from the people the privilege of having banks if they desired them. It distressed these gentlemen to find

of its stock deposited on security; and if such stock so deposited shall become devalued, such corporation or association shall be required to make a further deposit of stock to the amount of such devaluation.

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their thunder stolen and themselves obliged to provide other. Their great object was to have banks, and they brought forward all the arguments their ingenuity could suggest to delude the people into a belief that banking could be made free and general. He could assure gentlemen when they aimed their staffs at the committee that they were invulnerable. He wished to see gentlemen on this floor take their true position. He had a sincere respect for those who from principle were in favor of banks, but as regarded the conduct of those who, while really in favor of banks and striving to provide for them, attempted to delude the people by arguing against them, he could not but consider it a system of hypocrisy.

As regarded the argument of the gentleman from Rock (Mr. Whiton)—how did his arguments and his action correspond? He proposed a system by which we can have banks, yet argued against them; and enforces his proposition by remarks on the subject of general banking at considerable length. Would any gentleman say that the system of banking adopted in New York conveyed more general privileges than special laws would? Was there any advantage in this system? If so, he hoped gentlemen would point them out and not pretend to say that a general banking system would extend its privileges equally to every citizen. They wanted no such sophistry. In all its forms it would be a special law; and in Michigan, particularly, it was such, for the benefit not of capitalists, but of speculators. In every case it has proved a system of swindling. In New York the system had not yet had time to develop itself—it would require a longer time there than in Michigan because a greater number of capitalists had engaged in it; but the result would be the same.

He was unable to say what position gentlemen on this floor would take on this subject. If one could judge by the remarks of some gentlemen, they would be found either not voting at all, or voting on both sides of the question. Sometime before this subject was disposed of, he hoped gentlemen would find themselves obliged to show their hands.

Mr. McClellan said that he had always understood that people laboring under some species of delirium were very apt to see serpents. The proposition made by him bore no analogy to the wildcat banking system of Michigan.

And pending the question thereon, Mr. Whiton moved that the article be recommitted to the committee of the whole, which was agreed to.

[Mr. Whiton was better pleased with some parts of the amendment than any proposition that had been submitted. He hoped every gentleman would meet this subject manfully. He did not think the country at present required banks. He felt that the vote on the old constitution was a virtual instruction that some provision should be made for banking.—*Tri-Weekly Express*, Jan. 13, 1848.]

The convention then resolved itself into committee of the whole for the consideration of No. 4, article on banks and banking, Mr. Sanders in the chair.

Mr. Kilbourn proposed to amend by substituting in lieu of the original article the following article on

BANKS AND BANKING

“Section 1. The legislature shall not have power to authorize or incorporate by special act any bank or other institution having any banking power or privilege; but in case the separate article entitled ‘Free Banking,’ which is appended to this constitution and submitted separately to a vote of the people for their adoption or rejection, should be adopted by a majority of the votes given on that subject, then and in that case it shall be lawful for the legislature to pass general laws on the subject of banking conformably to the provisions of said separate article; and said article, if so adopted, shall be a part of the constitution and shall be appended to and form a part of this article.”

RESOLUTION TO SUBMIT THE ARTICLE ON FREE BANKING TO A SEPARATE VOTE OF THE PEOPLE

“*Resolved*, That the following article be submitted to the people to be voted upon separate and distinct from the body of the constitution. The votes given on that subject shall be deposited in a separate box and shall have on them, written or printed, or partly written and partly printed, the following words: ‘For free bank article’ on those votes in favor of its adoption, and ‘Against free banking article’ on those votes against the adoption of said article; and if a majority of said votes be ‘for,’ then said article shall be adopted; but if a majority of said votes be ‘against,’ then said article shall be rejected.”

SEPARATE ARTICLE: FREE BANKING

"Section 1. The legislature shall have power to pass general laws for the purpose of authorizing corporations or associations to transact banking business, but all such laws shall be conformable to the following provisions in this article contained.

"Section 2. No corporation, institution, association, person or persons, shall issue any bill, note, or other paper in the form of bank bills, nor in any other form intended to circulate as money, except in pursuance of laws authorizing such issue passed and approved agreeably to the foregoing section of this article.

"Section 3. The legislature shall not have power to pass any law sanctioning in any manner, directly or indirectly, a suspension of specie payments by any person, association, or corporation issuing bank notes or notes for circulation as money of any description.

"Section 4. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money and shall require ample security in stock of the United States for the redemption of the same in specie.

"Section 5. In case of the insolvency of any bank or banking association, the bill holders thereof shall have preference in payment over all other creditors of such bank or association.

"Section 6. The stockholders in every corporation or association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association for all its debts and liabilities of every kind."

Mr. McClellan offered his substitute for that offered by Mr. Kilbourn.

The amendments having been read by the secretary, Mr. Judd asked for a division of the question on Mr. McClellan's substitute so that each section might be submitted to the committee separately. Mr. Chase thought such a division would not be in order. The substitute was an amendment to an amendment. It seemed therefore impossible to adopt part and not the whole. He well understood the dilemma in which the gentleman from Dodge was placed, but he could not get out of it that way. The substitute was a single, individual proposition.

Mr. Kilbourn said he had offered a substitute to the original proposition, to which an amendment was offered by the gentleman from Racine (Mr. McClellan). He proposed to review in a very few words the several propositions but did not propose to discuss the question of banking on its merits. Public opinion required one of two things. It was expected either that the convention would adopt some general provision in reference to banks, or that it would not. His own opinion was that public opinion did demand an expression on this subject from the convention and a provision which should permit banking. The question was how should this be done. It was clearly expected that some restraining provision should be adopted to prevent "free" banking. It became the duty of the convention to adopt a provision restraining it either entirely or in part. If they adopted the first two lines of the first section and struck out what followed, they would entirely close the door on domestic banking. He did not believe that the people expected that of the convention. They expected some system of banking from it.

Something had been said—not so much in this convention as in the previous one, and in the public press—but something had been said here about "bank men" and "bank Democrats." On this subject he was perfectly willing to show his hand now. So far as concerned any interest which might be supposed to influence him he was willing to state that he had never had any interest in any banking establishment; he had never had any occasion for bank accommodation. He made it a principle never to be in debt to anyone. He did not consider bank stock as a safe or profitable investment; and if he were obliged to borrow he would prefer having recourse to his friends rather than to banks. It was true he had once been so obliging as to lend his name as an endorser on bank paper, and he had been obliged to pay some three thousand dollars in consequence. Many might suppose that on this account he would be an enemy to banks. It was not so. What he had done in that matter, he had done from the dictates of his own judgment. So far as personal feelings were concerned, if he had any at all upon the subject, they would probably be enlisted against banks. But he had no personal feelings about the matter. He viewed the whole subject entirely with regard to public sentiment and the public interest. He thought a system of banking might be adopted which would be a public benefit. Not that he thought a system could be adopted which would enable everyone to obtain a loan. He was aware that it was a com-

mon argument against banking institutions, that all could not be accommodated with loans and therefore that all could not be benefited by them. He held that whatever tended to promote the business interests was for the general good of the country. Merchants could obtain money on better terms from banks than from brokers; and by paying a lower price for their capital they could pay a higher price to the producer. The very fact of the existence of producers and dealers begat the necessity of an intermediate class to furnish capital.

He deemed the proposition which he had submitted to the convention and also that submitted by Mr. McClellan to be preferable to the article as reported by the committee. He did not yet know which of the two propositions he should prefer. The article as reported by the committee contained, in its outset, a special privilege. Now if there was any one thing which the Democratic party has especially opposed for the last twenty years, it was this principle of special privileges; and for the last ten years opposition to it has been a cardinal maxim. The committee in agreeing upon that article had leaped over a great barrier against private fraud and public speculation. This might be regarded as the entering wedge to break down this barrier. Here was the principle acknowledged, that banking in the hands of certain individuals who shall be designated by the legislature was a benefit. But it was urged that all danger was guarded against by submitting the proposition to the people—that there was no danger in special privileges if the matter was left to the people. He believed that if once this principle was established by the convention, composed as it was, two-thirds of it of Democrats, the people would soon ask, "If this principle is right, why not vote for it?" No one could say but that in the course of a few years the people might, under the pressure of some extraordinary exigency, be induced to vote for an institution under the provisions of the article. If such a thing should happen, we should have one great mammoth institution and at the same time have provided that we should have no more—a colossus, with no little images to surround it. We should be obliged in self-protection to amend the constitution so as to adopt some principle of free banking, in order to shear this colossus of some portion of its power. It was better to begin right in the first place. It was used as a weighty argument against the old constitution, that it was more difficult to amend a bad constitution than to make a new one.

If there was any matter on which extreme caution should be used it was the monetary affairs of a country. The tendency of all legislation had been to build up monopolies in this particular, but to discourage them in every other respect. Why make this an exception? Leave it free like other matters, and let those engage in it who can. It was not every capitalist who would engage in banking; other fields were open to men of capital.

There was one important point upon which the report was entirely at fault; that was in asserting that banking was wrong in itself, wicked, and abominable. One gentleman on this floor—and he was the chairman of the committee which made the report—even compared the amendments which permitted banking to so many vipers striving which should get their heads the highest. Now if this idea was correct, the gentleman should have stopped, and the committee should have stopped at the first section of their article, and declared that no system of banking should be permitted. Instead of doing so, they went further and prescribed a mode by which banking should be allowed. If banking were right at all, it should be thrown open to competition; if wrong, we should have none of it.

Mr. Kilbourn said that he thought he had shown that the principle embodied in the original article might lead to the incorporation of a mammoth institution. If so, it should be surrounded with some guards. But it did not provide for any specific responsibility to guard the interests of the public. Individual responsibility consisted more in sound than in sense. How easy it would be, as was done in the case of the wildcat banks of Michigan, for stockholders to shuffle off the responsibility and put it on the shoulders of men of straw. Generally, however, we have found these frauds perpetrated in the first place by men of straw, who have kept up the credit of their institution for a season by having a sufficient quantity of specie in their vaults, until they have spread their notes among the people to a sufficient amount to answer their own purposes. The bank is then closed, and the stockholders found worthless. It was not safe to rely on individual liability at all, but on specific securities which should be pledged. Let these securities be ample. It was the matter of "bank issues" over which legislation was required to keep a guard. If there should be just as many dollars or the same amount of United States stock deposited with the state treasurer as there were dollars issued, the issue must be

safe. The other transactions of the bank would be with men of business, and they must judge of the responsibility of the institution. But the business of legislation was to protect the community by making the issues equivalent to gold and silver. When legislation had done that, it had done its whole duty.

Whatever system should be finally adopted should contain ample guarantee for the security of all issues. This great feature was to be fully considered; when this was done, it was of very little moment what the other provisions might be. When it was so arranged that no fraud could be perpetrated, all the sum and substance of their duty was discharged. The proposition which he (Mr. Kilbourn) had submitted abundantly guarded this point; and as to any difference of opinion among members as to whether banks shall be allowed to be chartered or not, that would be decided without reference to detail. As to the matter of submitting the article separately to the people, it was to be considered that there were a great many persons in the territory who, like the gentleman from Fond du Lac (Mr. Chase), were ultra in their views and would oppose anything in the shape of a bank, at all times and under all circumstances, and would vote against any constitution which provided for banking. It was politic, therefore, to submit the article separately to the people, so that all would have an opportunity to vote for or against the constitution without reference to that. The proposition presented by Mr. Beall contained this feature. The others did not. His (Mr. Kilbourn's) first proposition provided that the article should be incorporated into the constitution, reserving to the people the power of approving or disapproving of any law passed by the legislature on the subject. But it was thought best to make it a separate article, as it was the opinion of many that there were those who were so decidedly opposed to banks that they would not vote for any constitution which made any provision for them.

Mr. Kilbourn said that he had only to add that he was opposed to the proposition of the committee in toto. It was all wrong. It commenced with declaring the views which the committee really entertained and went on to propose a measure in direct contradiction to those views. He was not prepared to charge upon the committee an intention of forestalling all action on the subject of banking; but such an intention was attributed to them by many who felt very indignant at what they conceived to be their course. Mr. Kilbourn said that he would for the present withdraw his

proposition, to give gentlemen an opportunity of examining the subject in detail.

Mr. Beall offered as an amendment, in committee, the same proposition which he had previously offered in convention, and spoke at some length in support of it.

Mr. McClellan offered his amendment as a substitute to Mr. Beall's.

[Mr. Beall preferred his proposition to that of the gentleman from Racine (Mr. McClellan) because it proposed a separate submission of the general banking law to the people. He was himself, under all circumstances, an antibank man; and the more he considered on the subject the better convinced he was that he was right. He spoke at considerable length and with great warmth against every system of banking and closed with a strong appeal to those opposed to banks to take the stand for a separate submission. He said, "Let the matter come before the people, and there we can whip it; if not, let it be well guarded. But let us go against a bank article in the constitution either general or special."—*Tri-Weekly Express*, Jan. 13, 1848.]

(Mr. Kilbourn having withdrawn his amendment, Mr. McClellan's, as an amendment to that amendment, was withdrawn with it and must be offered again.)

Mr. Martin hoped the gentleman from Racine would withdraw his substitute and allow him to offer an amendment to the original article.

Mr. McClellan withdrew his proposition. Mr. Martin then moved to amend the original article by striking out everything after the word "whatever" in the first section. He said that he found that every gentleman who had spoken on the subject, both in committee and in the convention, had taken ground against banks. In order to put the matter on its proper ground, he now proposed an amendment which would enable gentlemen who were opposed to banks to vote against them, and those who were in favor of them to vote for them. The naked question would be before the convention; and gentlemen would know upon what ground to stand.

Mr. O. Cole said he was glad that after beating about the bush so long they had at last got fairly into the question of banking. He would vote in favor of Mr. Martin's amendment and would be found to sustain the ground covered by it, whatever propositions might arise. The system that had thus far been pursued in the dis-

cussion of this matter was an extraordinary one. Gentlemen matured propositions in their rooms and sprung them suddenly upon the convention. Members were called upon to express their views and to vote upon these propositions after having merely heard them read at the clerk's desk. Now he would submit it to every intelligent person, whether he was able to form any idea of a proposition by simply hearing it read in this manner. He, for one, must confess his inability to do so.

The question now before the convention was reduced to the simple proposition whether the legislature should have the power to grant banking privileges. He for one would say that it should not. If this proposition was not sustained, he would fall back on the proposition of Mr. Beall, to submit the matter to the people. It had been correctly remarked that members would now have an opportunity to speak as they thought. They could not now have the privilege of speaking both for and against banks.

He hoped the gentleman from Rock (Mr. Whiton) would adhere to his principle of separating entirely all government interests from banks. The sooner that currency and legislation were divorced, the better. That gentleman had said that he would go against all this matter of banking, if we had a sound public sentiment on the subject. How shall we ever have a sound public sentiment if we go on tampering with the disease? It was no mode of medicinal practice to cure a distemper by stimulating and fostering it. He believed the system of banking would regulate itself if left to its own operation. There was no necessity of granting to the legislature any power to charter banks. If we have not a sound public sentiment on this subject now, the sooner we have it the better.

The gentleman from Fond du Lac (Mr. Beall) had said that there would be an advantage in having a bank within the state, to keep out bank paper from other states. He (Mr. Cole) regarded this as an unsound argument. The object of all banks was to circulate their paper beyond the limits of the state, so as to have a longer time for redemption and to avail themselves of the chance of their bills being lost or destroyed. We might establish a bank in every neighborhood, and bank paper from abroad would still be forced upon us. The volume of bank paper would not be restricted by prohibition.

Mr. Chase said he had hoped when his colleague (Mr. Beall) took the floor he would not have favored the committee with another long argument deduced in its principles from Say's *Political Economy*, Adam Smith's *Wealth of Nations*, or Mr. Cambrelling's *Political Dissertations*, delivered evidently for home consumption. This he believed from the only means of judging he possessed, internal evidence and the fact that the gentleman represented an antibank constituency. He (Mr. Beall) by his proposition first opened the door to the worst kind of wildcat banking and then made a speech against banking and bank currency and in the very same breath spoke of hypocrisy! The old adage was forcibly brought to his mind: "Who looks through maudlin eyes, sees everybody drunk." He wished to advert to a single remark made by the gentleman from Milwaukee (Mr. Kilbourn) that "whatever promotes the business of a country contributes to its welfare." He thought this a singular position for that gentleman to assume, when he so well knew that business was promoted in 1836 beyond all calculation by banks and banking.

Mr. Beall made some remarks in reply.

The committee then rose and by their chairman reported progress and asked leave to sit again thereon. Leave was granted.

On motion of Mr. King the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The convention resolved itself into committee of the whole for the further consideration of No. 4, article on banks and banking, Mr. Sanders in the chair.

The vote on the motion of Mr. Martin to strike out all after the word "whatever" was taken, and the motion prevailed.

Mr. Judd moved to strike out from the first section the words "general or." The motion prevailed 31 to 13.

Mr. A. G. Cole offered an amendment, and Mr. McClellan renewed his motion for his substitute. After some discussion upon points of order and the priority of business, Mr. A. G. Cole withdrew his amendment.

The question being on the amendment offered by Mr. McClellan, Mr. Judd made some remarks.

[Mr. Judd said he thought it must be apparent that they had got into a field from which it would take a long time to get out. In the

main principle men do not seem to differ much; but in the detail there is a great diversity of opinion. Individually, he would prefer to let the article remain as it is; but out of deference to the will of the people he would adopt a single section authorizing a general banking law, and let the legislature provide all the checks necessary, and submit the law to the people for their acceptance.—*Tri-Weekly Express*, Jan. 13, 1848.]

Mr. Chase, to get the subject in order for intelligent action, moved that the committee rise and report all the different amendments which have been offered, to the convention, and then he would move to have them all printed. That would give the convention an opportunity to get the whole before them in a way that they could understand them, and he did not think it could be done in any other way. Mr. King hoped the motion would not prevail. It would take three or four days to print them, and it would be useless waste of time. He thought there would be no difficulty in understanding and passing upon each proposition as it came up in order. Mr. Chase said it would cause no delay, as the convention could go on with other business.

Mr. Judd spoke in opposition.

[Mr. Judd said he hoped the committee would not agree to the motion; it would be imposing a large amount of printing upon the printers of the convention, and out of respect to them, as they do the work so cheap, he would oppose the motion.—*Tri-Weekly Express*, Jan. 13, 1848.]

Mr. O. Cole hoped the committee would not rise. There were doubtless other amendments to be proposed; indeed from the indications he saw he thought every member had a distinct plan of his own to propose. The war between the different propositions was as fierce as that between Typhon and the Gods; and Pelion had been heaped upon Ossa already in the way of amendment. He thought if any of the amendments were to be printed they should all be, but he did not think it was worth while to print any of them. Mr. Jackson hoped also the committee would not rise and order the amendments to be printed. The motion was lost.

The question then being on the amendment offered by the gentleman from Racine (Mr. McClellan), Mr. Jackson suggested that as there were a large number of amendments it might expedite business to adopt some one of them and report it to the convention, and thus have something definite to act upon.

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The question was then taken on the amendment of the gentleman from Racine, and was lost.

Mr. Whiton offered the following amendment: "Strike out the whole article and insert as follows, to wit: 'The legislature shall have no power to grant any special bank charters nor any special banking privileges whatever and shall pass no general banking law which shall take effect until the same shall have been submitted to the people of the state at some annual election, in such manner as the legislature shall provide, and shall have been approved by a majority of all the votes cast at such election.'"

Mr. Whiton spoke at length in favor of this amendment. Mr. Beall spoke in reply.

[Mr. Whiton said he offered this as a substitute for all the articles presented. He was opposed to special banking laws and was willing to prohibit them, but was in favor of a general banking law whenever the people wanted it. He did not think that banks were at present needed; and he was free to say that were he a member of the legislature now he would oppose the passage of such a law; but he thought it was a bold business to declare that the people shall never pass such a law. His amendment did not go at all into details, but had left them entirely with the legislature, believing that to be the proper authority for carrying out the details. No law can take effect until it goes before the people. He was opposed to a separate submission of this article, but wanted to submit a constitution distinctly to the people—if they like it, let them adopt it; if not, let them reject it. He was not afraid that the power to create a bank thus guarded would be abused, and he did not believe that the people would vote for a law that was not properly guarded. He would ask gentlemen if they hope to exclude the circulation of all bank paper in the territory; it cannot be prevented. Banks of other states will send their paper here, and we will take it. Those who favor a hard currency may regret this but they cannot prevent it. It is not wise, just, and honest, then, to leave it with the people to decide what paper they will have, whether that of other states or that of their own.

Mr. Beall said he had great respect for the opinions of the gentleman from Rock (Mr. Whiton) but in this respect he could not agree with him. It was expected by his constituents that there would be some landmarks laid out. He was for laying down the

principles and letting the people vote on them when they vote on their fundamental law.—*Tri-Weekly Express*, Jan. 13, 1848.]

Mr. Estabrook said he would have been content with a silent vote on this subject, were it not that he had received a number of communications from his constituents in regard to it. He said he felt somewhat like the man who escaped from the lunatic asylum, who said it seemed to him that everybody was crazy. The Whigs and bank men of this convention were frantic with joy at the hope that this Gorgon is to be fastened upon the body politic; and the antibank men are taken aback with fear that so dreadful a calamity may be consummated. There were three propositions before the convention, one of which was to prohibit banking altogether. Individually, he was in favor of this, and so he believed were three-fourths of the members of the convention, at heart. But there were many who thought directly the contrary—that our whole salvation as far as business was concerned depended on having banks. Out of respect to these he was willing to yield somewhat. He was willing so to provide that their views might be consulted, and allowance made for them in our present arrangements, and if they should ever come to prevail, that they might be carried out in the form of law. How far, then, should we go? Should we leave the whole matter in the hands of the legislature—leave the whole field open? That would be democratic. Some gentlemen talk a great deal about democracy; but their course shows that they have not the unbounded confidence in the people that they profess. Why not do this, then? For this reason, sir. There is something sly and insidious in the money power, which needs to be guarded against. The oysters, and good cheer, and smiles of bank men are able to corrupt the legislature, as experience has abundantly shown. Now, if the mischief done by one legislature could be undone by another, the danger would not be so great—the struggle so unequal; but when in an evil hour a charter has been granted for twenty or thirty years, the bankers can stand upon their “vested rights” thereafter and defy legislation till the time expires.

There are two other methods proposed—a general banking system, and special charters. Mr. Estabrook repudiated wholly the general banking system. It was the greatest of all humbugs. As to the other, the majority of the committee had reported in favor of giving the legislature the power to charter banks, provided they should not be of any validity unless sanctioned by a majority of the

people. What objection had gentlemen to this? They say that it is a mere ruse—that it holds out the appearance of allowing banks and yet effectually prevents the establishment of any. If it does, why does it? It can only be because the people condemn them—a good and sufficient reason. Shall not the people rule? No, say the gentlemen. They say, in effect, give us a means of doing indirectly what the people will not allow us to do directly. They want a banking system which shall give an equal chance to all, the poor as well as the rich! It is singular that poor men should have so many friends on this floor, and that bank men should be the most zealous of them at this time! Sir, the idea of getting up a banking system for poor men is a gross humbug, got up only to mislead and lure us on to destruction. In the words of my old friend Shakespeare,

The earth hath bubbles as the water hath,
And these are of them.

I said this project of free banking, though advocated under the specious cry of “equality” and “poor man’s rights,” was in reality a scheme for defeating the will of the people, and thus I demonstrate it. Suppose the legislature should pass an act incorporating a bank in Milwaukee, specifying all the privileges granted, the securities required, the persons who were to control it, etc., and should then submit it to a vote of the people. Gentlemen admit—yes, and complain—that the people would undoubtedly vote it down. Then suppose a general banking law were submitted to the people, and the activity and combined effort of all the sharpers in the territory should be able to prevail over their inattention and inactivity, as gentlemen seem to think they might, and it should be carried through. The same persons, then, in Milwaukee, whom the people would not have trusted with banking privileges, if they could have voted upon it directly and specifically, or any others far less trustworthy, might then form themselves into a bank in opposition to the will of the people. Thus the will of the people is defeated; or, at least, they have been trapped into admitting in general and indefinite terms what they would have rejected if presented to them in a definite and specific form.

No one of the advocates of banks has been able to tell us why, if we are to have banks, they should not be created by special laws. The gentleman from Rock says the age of special charters is past. True, and why? Because special charters, submitted as we propose

to a vote of the people, after the experience they have had in bank operations, cannot pass. He cannot frighten them with the odious term "special." Call them what you please, the object is merely to submit definite propositions to the people, instead of general and indefinite ones. The gentleman inquired if banking was not a legitimate business, and he seemed to think that if any of our citizens wished to go into banking they had a right to, as well as into any other business. Mr. Estabrook said he would not pretend to say absolutely that banking was not a legitimate business, but he would say that it did not stand on the same ground as other business. It was not a matter which concerned bankers wholly or chiefly. The establishment of a system of banks among us would cause a revolution in all our business affairs. It would banish specie and substitute paper. The price and the kind of pay which every man should receive for his property or labor were involved in it. All are interested in it deeply—not the man who issues the picture, merely, but the man who gives his bushel of wheat for it. All, then, should have a fair chance to express their opinions in regard to its establishment, and if the public voice is against it, it should be prohibited.

Mr. Estabrook said that he would go against any plan of free banking, but out of respect to those of his constituents who differed with him on the general question of banking, he felt it his duty to go for some such plan as that proposed by the majority of the committee. But why would not gentlemen who were opposed to all banks and whose constituents entertained the same views carry out their principles? They say they are warned by the fate of the old constitution that the people in general are not in favor of it. Mr. Estabrook said he did not think the vote on the old constitution should be so interpreted. He had taken an active part in the canvass on that instrument, and never but once did he hear any speaker oppose the constitution on account of the prohibition of banking in it. One gentleman—one of the most eloquent of the Milwaukee bar—had ventured to take that ground, but he was almost hissed down by the crowd; and some Whigs were among the most clamorous in their manifestation of disapprobation. He had seen nothing in the vote or canvass on the last constitution which should induce any antibank man to go against his honest conviction upon this subject. As for himself, when he had provided that bank charters might be submitted to the people, he believed he had conceded all he ought.

The gentleman from Rock had said that we were bound to have some bank paper among us, and then inquired whether we should have it from abroad or from institutions within our control. On the same principle, as we are bound to have the smallpox among us, should we generate the disease at home, to keep out that from abroad and thus have it where we could control it? No, sir. Let us prevent it wholly at home, and thus, if we must have the evil amongst us, have it in a mitigated form. If a foreign bank should break, we would lose comparatively little by it; but if a bank among us should break, it would carry derangement and ruin to our business far and wide. Let us then do what we can to avert the evils of banking from our territory; and we may be sure that, though we cannot do all we desire, or which should be done, we can do very much towards it.

Mr. Whiton spoke in reply.

[Mr. Whiton replied briefly. He wished gentlemen would show their hands; for his part he had no opinions to conceal. He said the gentleman might call the general laws humbug or what he pleased; he considered them infinitely superior to special bank charters.—*Tri-Weekly Express*, Jan. 13, 1848.]

Mr. Kilbourn called for the reading of the amendment. It was read. Mr. Kilbourn said it read as he had supposed at first, but the course of remark upon it had led him to suspect that he might be mistaken. The gentleman from Walworth had yielded the whole ground. He had said he was willing to leave the question in the hands of the people, but not in the hands of the legislature. The amendment contemplated a submission to the people, and the gentleman would therefore vote for it according to his own principles. He presumed there would be no danger in any system which had received the sanction of the whole people. They could not be deceived or carried away by any sudden excitement, as a small number might. The law could be carried only by an appeal to reason. The gentleman, then, having yielded all the amendment proposes, as far as principle is concerned, the question arises in what way the matter could best be submitted to the people. Believing that the granting of exclusive privileges was wrong in principle, Mr. Kilbourn said he could not himself support the plan proposed by the majority of the committee. The gentleman probably thought that with such a provision no charter could ever be obtained, because sufficient interest could not be excited generally throughout

the territory to procure a majority of the votes cast for the establishment of a bank at any one point. If the gentleman wanted to prevent the obtaining of any bank charter, as he evidently did, he should have gone for it in direct terms. True, he says he goes for a banking system to meet the wishes of his constituents; but he does not do it in reality. The course he has proposed to himself is a way of evading the question. It holds out the appearance of conceding to the wishes of his constituents, while in reality it precludes, and is intended to preclude, the possibility of carrying out their wishes. This is unfair dealing. If the gentleman for any reason is willing to concede anything to the wishes of his constituents, he should do it in reality and in good faith—not delude them with an empty show. But, suppose it were possible to obtain bank charters under the plan proposed by the gentleman. The question arises, is the kind of bank which would be thus obtained the best. Would it suit the gentleman himself best? Mr. Kilbourn said he hoped not. It was easy to see that there might be better. The gentleman, then, went against general banking because that plan would be too easily carried, and in favor of special charters because they would be almost impossible to be obtained, both from the restrictions imposed and the fact that the system itself would be a bad one. This was not a fair, manly way of meeting the question; and it was unjust to the people, as it really left them but a choice of evils.

The gentleman had asked how poor men were to be benefited by banking. It was not expected by those who advocated banks, as gentlemen seemed erroneously to have supposed, that poor men would be directly benefited by engaging in it and sharing its benefits themselves. It was not expected that poor men would be bankers; nor was it expected that they would be merchants, or mechanics, or farmers, unless they had the requisite means for engaging in those pursuits. Banking had been done by very poor men in Michigan and some other states; but the result did not show that such a thing was desirable. In the plan now proposed it was required that full security shall be lodged for every dollar issued. The bill holders were so secured that they could not possibly lose anything. It would be a convenience to the business of the country to have such a system—a convenience to poor men, too. It is admitted that the increase of the currency raises prices, and some regard this as an objection, and some as an argument in favor of banking. Such a rise in prices in the territory would certainly be a benefit to poor

men. Their labor, their wheat, their land would rise in value; but merchandise and imported articles would not rise at all in proportion. Whatever, then, conduces to the facilities of business improves the condition of labor and benefits the poor man. Mr. Kilbourn said he had stated this proposition before, and he believed it correct, and he would support the substance of the amendment under consideration as he believed it would establish a system which would promote the business of the country. It might be said that we should leave the whole subject to the legislature. He did not think so. He would lay it down in the constitution for the benefit and information of the people that they might know what was the system which was established and what restrictions were imposed. There should be some bounds fixed. It was wise and prudent to guard the legislature and define their powers with particularity. New York had done this in the constitution she had just adopted. The provisions she had adopted in relation to banking were the same as those contained in his amendment. His amendment was copied from the New York law. But he had inserted an additional restriction, restraining banks from making any issues unless authorized by law. This was a great and essential restriction and was found in no proposition but his own.

Mr. Chase, before the question was taken on the amendment, wished to inquire of the gentleman from Rock whether by his amendment as he designed it the legislature would have power to grant a special bank charter or not. He was not able himself to tell from the reading. Mr. Whiton said he had no design but what appeared on the face of the amendment. It spoke for itself.

Mr. Chase said he understood then that the power was taken away from the legislature to grant any special act of incorporation. Now we had been told very solemnly by the gentleman from Rock that it required a bold man to stand up here and advocate taking away from the people the right or the power to legislate upon the currency in any way they pleased. This was brought up as a strong argument against placing any restriction or prohibition in the constitution. And now the gentleman himself proposed by his amendment to take away from the people or their representatives the power to grant special charters. Did it not require an equally bold man to advocate this? And could not all the gentleman's arguments be turned against himself? Why was it that gentlemen were so opposed to submitting special charters to a vote of the people and

so eager for a general banking law? It was easy to see that the only reason was because they thought they could carry their ends in the latter form and not in the former. To get banks established was their only object, and they considered only what was the most feasible plan of accomplishing this. Gentlemen had acknowledged that the rich only could engage in banking whether general or special—that they would receive all its direct profits and privileges. Did the people want us to place in the constitution a provision for the benefit of the rich? It was our duty to guard the interests of the people, and this would be to betray them.

Mr. Kilbourn said, in answer to the inquiry of the gentleman from Fond du Lac why he and others were opposed to submitting the question to the people in the form of a proposition for special charters, he would say for one that it was because that system had been repudiated by the Democratic party for the last twenty years. Mr. Chase inquired if they had not equally repudiated all banking. Mr. Kilbourn said they had not and instanced the state of New York, where a Democratic convention had just provided for a system of free banking.

Mr. King said that he desired to state one fact in addition to what had fallen from his colleague and in answer to the question of the gentleman from Fond du Lac whether the Democratic party had not repudiated banks and banking in every shape. The general banking law went into operation in New York in 1838 and was adopted as a substitute for the corrupt safety fund system, the system of special bank charters now proposed to be revived here. This general law had been in operation nearly nine years when the convention assembled in New York last year to amend the constitution. The majority of that convention were of the Democratic party and of that "progressive" school, moreover, to which the gentleman from Fond du Lac claimed to be attached. Yet in that convention, thus composed, a naked proposition to do away with all banks received but 10 out of 128 votes. And the general banking law, after nine years' experience, was continued and confirmed by an equally emphatic vote.

Mr. Doran said he would vote for the amendment and would vote afterwards to amend it.

The question was then taken and decided in the negative, 19 to 32.

The committee then rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. Larkin the convention took a recess until seven o'clock P.M.

SEVEN O'CLOCK P.M.

The convention resolved itself into committee of the whole for the further consideration of No. 4, article on banks and banking, Mr. Sanders in the chair.

Mr. McClellan moved to amend by limiting the amount of bank notes which might be issued within the state. Mr. Kilbourn could not see the necessity of the amendment. The legislature could not tell what amount of capital might be needed for the business of the country. They might as well attempt to limit the amount of capital which should be invested in merchandise, manufacturing, or any other kind of business. He thought it should be left to be regulated by the business demands of the country, and to be increased or diminished as its trade and other circumstances might require. He regarded the amendment as perfectly futile and hoped the gentleman would withdraw it. The amendment was withdrawn.

Mr. Jackson moved to amend by striking out the section providing for the separate submission of the article, which was decided in the negative.

The committee then rose and reported the same back to the convention with an amendment.

Mr. Kilbourn moved to amend by substituting in lieu of the original article the following:

BANKS AND BANKING

"Section 1. The legislature shall not have power to authorize or incorporate by special act any bank or other institution having any banking power or privilege; but in case the separate article entitled 'Free Banking,' which is appended to this constitution and submitted separately to a vote of the people for their adoption or rejection, should be adopted by a majority of the votes given on that subject, then and in that case it shall be lawful for the legislature to pass general laws on the subject of banking, conformably to the provisions of said separate article; and said article, if so adopted, shall be a part of this constitution and shall be appended to and form a part of this article.

RESOLUTION TO SUBMIT THE ARTICLE ON FREE BANKING TO A SEPARATE VOTE
OF THE PEOPLE

"Resolved, That the following article be submitted to the people to be voted upon separate and distinct from the body of the constitution. The votes given on that subject shall be deposited in a separate box and shall have on them written or printed [or partly written and partly printed] the following words: 'For free bank article' on those votes in favor of its adoption, and 'Against free bank article' on those votes against the adoption of said article; and if a majority of said votes be 'for,' then said article shall be adopted; but if a majority of said votes be 'against,' then said article shall be rejected."

FREE BANKING

"Section 1. The legislature shall have power to pass general laws for the purpose of authorizing corporations or associations to transact banking business; but all such laws shall be conformable to the following provisions in this article contained.

"Section 2. No corporation, institution, association, person or persons shall issue any bill, note or other paper in the form of bank bills or in any other form intended to circulate as money, except in pursuance of laws authorizing such issue, passed and approved agreeably to the foregoing section of this article.

"Section 3. The legislature shall not have power to pass any law sanctioning in any manner, directly or indirectly, a suspension of specie payments by any person, association, or corporation issuing bank notes or notes for circulation as money of any description.

"Section 4. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money and shall require ample security in stock of the United States for the redemption of the same in specie.

"Section 5. In case of the insolvency of any bank or banking association the bill holders thereof shall have preference in payment over all other creditors of such bank or association.

"Section 6. The stockholders in every corporation or association for banking purposes, issuing bank notes or any kind of paper credit to circulate as money, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association for all its debts and liabilities of every kind."

Mr. Kilbourn remarked that there had been several propositions presented, no two of which were in all respects alike; and as this differed somewhat from all the rest, he would point out its peculiar features. In the first place he proposed to insert a section prohibiting banking of every description, unless the article submitted separately should be adopted; in which event the legislature might pass general laws upon the subject, and the provision placed

RESOLUTION TO SCHEM THE ARTICLE ON BANKING TO A SEPARATE VOTE
OF THE PEOPLE

"Resolved, That the following article be submitted to the people to be voted upon separate and distinct from the body of the constitution. The vote given on that subject shall be deposited in a separate box and shall have an entire written or partly written and partly printed the following words: 'For two bank articles on those votes in favor of the adoption and rejection of said article; on those votes against the adoption of said article; and if a majority of said votes be for, then said article shall be adopted; but if a majority of said votes be against, then said article shall be rejected.'

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in the constitution would so far become inoperative. But if the separate article should be rejected, the section proposed to be incorporated into the constitution would be and remain in full force against all banking. This would bring the question of bank or no bank directly before the people, and that he supposed was what they all wanted. If the people decided in favor of banks, he was not one who would say they should not have them. If they decided against them, he was willing they should be prohibited in the constitution.

Mr. McClellan wished to inform the gentleman from Milwaukee that the article as it then stood prohibited banking in case the article proposed to be submitted separately should be rejected. Mr. Kilbourn thought it did not. The President read the provision of the article on that point. Mr. Kilbourn said it might be intended to cover the same ground, but this provision was so entangled with the other provisions of the article that it was, to say the least, doubtful whether any part of the article could be rejected without rejecting the whole. At all events, voters could not be likely to know what part of it was to be voted upon, and what not. The substitute he had offered placed these propositions in perfectly distinct positions, so that they could not possibly affect each other any further than they were intended to do so as the result of the popular vote. But he would pass over this part for the present.

Another feature peculiar to his proposition was that it required specific security for the notes issued, in United States stock. If state stocks were allowed as security, it would be comparatively insecure. State stocks had depreciated very materially and were always liable to depreciate more or less according to the financial circumstances of the country. If Ohio or even New York stocks were allowed as security they might so far depreciate as to subject bill holders to a loss, but United States stocks could not depreciate. If there was any security which could be regarded as perfectly safe, it was the paper of the federal government. Again, the stockholders were personally liable to the extent of the amount of stock they might own. Herein consisted the safety of the plan he proposed. Before a bank could go into operation under these provisions, it must deposit United States stocks equal to the entire amount of bills issued. The stockholders were in addition to this made personally responsible for the debts of the institution to the full extent of their interest in the bank. This security he did not

claim would be sufficient to cover all the responsibilities of the bank, for it might at times have a million of dollars on deposit, while the aggregate responsibility of the stockholders might not exceed three or four hundred thousand dollars; but it would cover the issues and secure the bill holders against the possibility of loss; and the best security for deposits was the reputation of the institution. He had pointed out three distinct features which were peculiar to the substitute and upon which he had chiefly depended to recommend it to the favor of the convention.

Mr. Chase had an amendment to the matter proposed to be stricken out, which he thought was entitled to precedence. The President decided that the substitute must first be disposed of.

And pending the question thereon, Mr. Beall moved that the convention adjourn, which was agreed to. And a division having been called for, there were 32 in the affirmative and 15 in the negative. So the convention adjourned.

Mr. Case moved that the fifth rule be suspended for the purpose of reading said resolutions now, which was agreed to. And a division having been called for, there were 25 in the affirmative and 10 in the negative.

Mr. Sanders moved that said resolutions be laid on the table. The question having been put, it was decided in the negative. And the vote on ayes having been called for and ordered, those who voted in the affirmative were [affirmative 25, negative 37; for the vote see Appendix I, page 204].

Mr. Whiton spoke in opposition to the resolution and stated among other things that the accounts of the superintendent contained a charge of \$138 for paste furnished to members of the convention. Mr. A. G. Cole hoped the resolution would not be adopted and agreed with the views expressed by Mr. Whiton. He said he decidedly objected to the idea of carrying home such miserable paper as was furnished here.

Mr. Reed differed from Mr. Whiton. He thought that the matter formed a proper subject of inquiry here. The legislature would have no means of auditing the accounts of the superintendent. It was true that the members of the convention had not had the proper supply of stationery. Now if there was any fault in this matter it was the business of the convention to determine where the fault

claim would be sufficient to cover all the responsibilities of the bank, for it might at times have a million of dollars on deposit, while the aggregate responsibility of the stockholders might not exceed three or four hundred thousand dollars; but it would cover the losses and secure the bill holders against the possibility of loss; and the best security for deposits was the reputation of the institution. He had pointed out three distinct features which were peculiar to the substitute and upon which he had chiefly depended to recommend it to the favor of the convention.

Mr. Chase had an amendment to the matter proposed to be stricken out, which he thought was entitled to precedence. The President decided that the substitute must first be disposed of.

And pending the question thereof, Mr. Ball moved that the convention adjourn, which was agreed to. And a division having been called for, there were 35 in the affirmative and 15 in the negative. So the convention adjourned.

WEDNESDAY, JANUARY 12, 1848

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read.

Mr. Fowler, from the committee on incidental expenses, reported the following resolutions, to wit: "*Resolved*, That the president and secretary of this convention are hereby authorized to issue a certificate to J. G. Knapp for \$220, to pay incidental expenses incurred by him for this convention.

"*Resolved*, That the superintendent of territorial property is hereby requested to furnish the members of this convention with such stationery as they may prefer to require to the extent of the appropriation made by the legislature for that purpose."

Mr. Sanders objected to the resolutions. Mr. Case explained that the object of them was to enable the committee to audit the accounts of the superintendent of public property and to enable him to furnish such stationery as was needed by the convention. Mr. Sanders said the reasons assigned by the gentleman from Waukesha convinced him still more strongly of the necessity of examination. If the superintendent of public property had exceeded the appropriation made for stationery it was proper for the convention to look into the matter.

Mr. Case moved that the fifth rule be suspended for the consideration of said resolutions now, which was agreed to. And a division having been called for, there were 28 in the affirmative and 10 in the negative.

Mr. Sanders moved that said resolutions be laid on the table. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 23, negative 37; for the vote see Appendix I, roll call 86].

Mr. Whiton spoke in opposition to the resolution and stated among other things that the accounts of the superintendent contained a charge of \$138 for paste furnished to members of the convention. Mr. A. G. Cole hoped the resolution would not be adopted and agreed with the views expressed by Mr. Whiton. He said he decidedly objected to the idea of carrying home such miserable paper as was furnished here.

Mr. Reed differed from Mr. Whiton. He thought that the matter formed a proper subject of inquiry here. The legislature would have no means of auditing the accounts of the superintendent. It was true that the members of the convention had not had the proper supply of stationery. Now if there was any fault in this matter it was the business of the convention to determine where the fault

lay. The legislature had made a liberal appropriation for stationery; and it was the business of the convention to inquire how this appropriation had been expended. The matter should be put in such a position that the superintendent should not get paid for what he had not furnished.

Mr. Sanders said that he saw by the report that only one-half of the appropriation had been expended for stationery. If the balance had been expended for other purposes the convention ought to know it. As for the stationery, members wanted no more of it than was necessary to be used here. It was too poor to be worth carrying home.

Mr. Fowler, as chairman of the select committee to which was referred the resolution of inquiry relative to the amount of stationery, etc., read a communication from Mr. Knapp, the superintendent. He said that in examining Mr. Knapp's account he found that a considerable portion of the amount expended was for articles which did not come under the head of stationery, such as door locks, chimneys for lamps, etc., etc., all of which the committee had disallowed.

Mr. Chase said that if he understood the proposition the committee had reported two resolutions: one, asking an appropriation to defray incidental expenses, because the superintendent had appropriated the funds for that object to other purposes; the other, to enable members to determine whether they wanted any further supply of stationery than they had received.

Mr. Sanders inquired whether there were any further incidental expenses to be paid. Mr. Fowler said he was not aware of any.

Mr. Kennedy called for a division of the question on said resolutions. And the question being put on the adoption of the first resolution, Mr. Sanders moved to amend the same by adding the following proviso: "*Provided, however, That said appropriation, or any part thereof, shall not be expended in purchasing gold pens for the use of the convention,*" which was disagreed to.

Mr. Lovell said the first resolution was a very proper one and ought to be passed whatever might have been the conduct of the superintendent in regard to the stationery. The resolution applied to incidental expenses, which must be paid. If the superintendent should attempt to show that he had exceeded the appropriation of \$690, applied it to other purposes, or had not applied it at all, and wished to draw all of it, then it was proper to take the matter in

hand; but a certificate should be given him for what he had actually expended.

The question was then put upon the adoption of said resolution, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 54, negative 7; for the vote see Appendix I, roll call 87].

The question was then put upon the adoption of the second resolution, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 35, negative 28; for the vote see Appendix I, roll call 88].

Mr. Bishop by leave presented a petition from Moses M. Strong, relative to submitting the old constitution again to a vote of the people, and moved that the same be laid upon the table and ordered printed. Mr. Doran called for a division of the question. And the question having been first put upon laying the petition on the table, it was decided in the affirmative.

The question was then put upon ordering the petition printed, and was disagreed ["agreed" in MS] to.

Mr. Sanders moved a reconsideration of the vote of the convention of yesterday on the adoption of the resolution introduced by Mr. King, relative to evening sessions. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 33; for the vote see Appendix I, roll call 89].

Mr. Harvey by leave introduced the following resolution, which was read, to wit: "*Resolved*, That the venerable 'Antiquary,' from Iowa, the petitioner, be admitted to be heard before this convention, at some convenient day and hour, in behalf of the prayer of his petition just laid on the table by vote of this convention."

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, reported No. 18, article on apportionment of representatives, as follows:

APPORTIONMENT OF REPRESENTATIVES

"Section 1. Until there shall be a new apportionment, the senators and members of assembly shall be apportioned among the several districts of the state as follows:

The counties of Brown, Calumet, Manitowoc, and Sheboygan shall be entitled to elect one senator.

The counties of Crawford, Chippewa, St. Croix, and La Pointe shall be entitled to elect one senator.

The county of Dane shall be entitled to elect one senator.

The county of Dodge shall be entitled to elect one senator.

The counties of Fond du Lac and Winnebago shall be entitled to elect one senator.

The county of Grant shall be entitled to elect one senator.

The county of Green shall be entitled to elect one senator.

The counties of Iowa and Richland shall be entitled to elect one senator.

The county of Jefferson shall be entitled to elect one senator.

The county of Lafayette shall be entitled to elect one senator.

The counties of Marquette, Columbia, Portage, and Sauk shall be entitled to elect one senator.

The county of Milwaukee shall be entitled to elect two senators.

The county of Racine shall be entitled to elect two senators.

The county of Rock shall be entitled to elect one senator.

The county of Walworth shall be entitled to elect one senator.

The county of Washington shall be entitled to elect one senator.

The county of Waukesha shall be entitled to elect one senator.

The county of Brown shall be entitled to elect one member of assembly.

The counties of Calumet and Manitowoc shall be entitled to elect one member of assembly.

The county of Columbia shall be entitled to elect one member of assembly.

The counties of Crawford, Chippewa, St. Croix, and La Pointe shall be entitled to elect one member of assembly.

The county of Dane shall be entitled to elect three members of assembly.

The county of Dodge shall be entitled to elect five members of assembly.

The county of Fond du Lac shall be entitled to elect two members of assembly.

The county of Grant shall be entitled to elect four members of assembly.

The county of Green shall be entitled to elect one member of assembly.

The counties of Iowa and Richland shall be entitled to elect two members of assembly.

The county of Jefferson shall be entitled to elect three members of assembly.

The county of Lafayette shall be entitled to elect two members of assembly.

The county of Marquette shall be entitled to elect one member of assembly.

The county of Milwaukee shall be entitled to elect seven members of assembly.

The county of Portage shall be entitled to elect one member of assembly.

The county of Racine shall be entitled to elect five members of assembly.

The county of Rock shall be entitled to elect five members of assembly.

The county of Sauk shall be entitled to elect one member of assembly.

The county of Sheboygan shall be entitled to elect two members of assembly.

The county of Walworth shall be entitled to elect five members of assembly.

The county of Washington shall be entitled to elect five members of assembly.

The county of Waukesha shall be entitled to elect five members of assembly.

The county of Winnebago shall be entitled to elect one member of assembly."

Said article was read the first and second times and ordered printed.

Mr. Fenton asked leave of absence for Mr. Carter. Leave was granted.

Resolution No. 2, introduced by Mr. Case yesterday, was taken up, when

Mr. Fenton moved to lay the same upon the table. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 29, negative 34; for the vote see Appendix I, roll call 90].

The morning hour having expired, the President announced the appointment of the following persons on the committee, under the resolution of Mr. Case adopted yesterday, to wit: Messrs. Case, Davenport, and O'Connor.

No. 4, article on banks and banking, was then taken up. Mr. A. G. Cole moved to amend the amendment as follows: "Strike out all relative to a separate submission to the people and substitute of the committee, and insert the following:

"Section 1. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in all cases where in the judgment of the legislature the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this article may be altered from time to time, or repealed.

"Section 2. Dues from corporations shall be secured by such individual liability of the corporations and other means as may be prescribed by law.

"Section 3. The term "corporations," as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations, not possessed by individuals or partnerships; and all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

"Section 4. The legislature shall have no power to pass any act granting any special charter for banking purposes; but associations may be formed for such purposes under general laws.

"Section 5. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast at such election. No such law shall be submitted to be voted on within three months after its passage.

"Section 6. The legislature shall have no power to pass any act granting in any manner, directly or indirectly, the suspension of specie payments by

any person, association, or corporation issuing bank notes of any description.

"Section 7. The legislature shall provide by law for the registry of all notes or bills issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

"Section 8. The stockholders in every corporation or association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, shall be individually responsible for the amount of their respective share or shares of stock in any such corporation or association for all its debts and liabilities of every kind.

"Section 9. In case of the insolvency of any bank or banking association, the bill holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

"Section 10. No association or body corporate created by law, except such associations or bodies corporate as are created for banking purposes, shall be in any manner concerned in receiving deposits, making discounts, or issuing any bills, promissory notes, or other evidences of debt for the purpose of loaning them or putting them in circulation as money."

Mr. Gifford made a few remarks in opposition to the amendment. He was in favor of leaving the question of banks as a separate article to be decided directly by the people. He thought there was a disposition on the part of some members of the convention to force banks upon the people.

Mr. Sanders was opposed to the motion of submitting the bank article separately to the people and in favor of incorporating in the constitution a provision for a general banking law, whenever the people should desire it. The question had taken a wide range and the real point had not been touched. It was not a question of a bank or no bank, but whether the people could have banks if they pleased. The question of submitting to the people was like men asking whether they should trust themselves or not. He deemed it right to leave the matter so far in the hands of the people as that the legislature should have no power to incorporate banks until the people had expressed a direct desire that they should do so. While he was fully convinced that the people of Wisconsin were almost to a man antibank and would oppose any such institution, yet he was opposed to tying them up or fettering them down with any constitutional enactment. All that the people asked was that the question should be left to them in such a manner that the legislature should not impose upon the public a currency not properly guarded. He believed that if gentlemen who were here in this convention from the east and from the west represented the views of their con-

stituents, they would be in favor of incorporating into the constitution such a proviso. He had the greatest confidence in the ability and integrity of the people, fully enough to be willing to trust them and leave it for them to decide whether they would have banks or not. While on this matter, as to the statement of the gentlemen from Milwaukee who had spoken yesterday on this subject (Messrs. Kilbourn and King) and who had said that the Democratic party was the bank party, he wished to say to them that the Democratic party was not an instrument which could be negotiated by such endorers. They could not make over the party to the banks by being its first and second endorers.

Messrs. King and Kilbourn explained.

Mr. Sanders continued. The Democratic party for the last seventy years had been waging war against these soulless corporations—institutions which had neither souls to be saved nor bodies to be kicked. It was true that in the state of New York the Democratic party had favored a general banking law, but he still believed that it was the true policy of the party to wage war against the system until the principle of general banking should itself be demolished. He was not in favor of creating a hydra to destroy the community. Still, we must take things as we find them. We find that the business of the world, as it is carried on, requires a fictitious capital, and this capital was given by legislative enactment. It would be mad and wild to attempt a reform now which would throw things back on the specie system.

Credit, continued Mr. Sanders, is of two kinds: natural and artificial. Natural credit is that which is given to a man in consideration of what he possesses—his farm, his property, his industry, or his integrity. But the business of society is of such a shape that artificial credit is necessary. This artificial credit must be guarded and protected by legislative enactments. The capitalist becomes a borrower instead of a lender; a bank, like a bubble, when burst was gone forever. It was the object of legislative enactments to guard issues and credit. If this view was correct it carried out the views expressed by the gentleman from Fond du Lac, of limiting the powers of banks by legislative enactments. If no such means of limitation were adopted, it would be in the power of interested persons to inflate currency beyond the wants of the people, or to draw it off in an improper direction. It was necessary, therefore, in order to protect the interests of the weak against the strong, that

attitude, they would be in favor of incorporating into the constitution such a provision. He had the greatest confidence in the ability and integrity of the people, fully enough to be willing to trust them and leave it for them to decide whether they would have banks or not. While on this matter, as to the statement of the gentleman from Milwaukee who had spoken yesterday on this subject (Messrs. Kibbourn and King) and who had said that the Democratic party was the bank party, he wished to say to them that the Democratic party was not an instrument which could be negotiated by such outsiders. They could not make over the party to the banks by doing its first and second endorsements.

Messrs. King and Kibbourn explained. Mr. Sanders continued. The Democratic party for the last seventy years had been waging war against these soulless corporations—institutions which had neither souls to be saved nor bodies to be kicked. It was true that in the state of New York the Democratic party had favored a general banking law, but he still believed that it was the true policy of the party to wage war against the system until the principle of general banking should itself be demolished. He was not in favor of creating a hybrid to destroy the community. Still we must take things as we find them. We find that the business of the world, as it is carried on, requires a fictitious capital, and this capital was given by legislative enactment. It would be mad and wild to attempt a reform now which would throw things back on the specie system.

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the legislature should have the power to limit the amount of artificial credit.

He was opposed to the principle of making stockholders liable to the full amount of stock. The same rule did not apply to banks as to partnerships. In the first case, a deposit was made equal to the full amount of issues. If the deposit consisted of dollars and cents, no gentleman would contend that it was necessary to make the stockholders liable to the amount of the stock.

It had been justly remarked that if that principle were incorporated, it would operate to prohibit entirely banks and banking. The chairman of the committee which reported the original article had openly declared that his object was to report an article which should defeat the whole system. This was practicing a species of deception which he could not countenance, and the gentleman would find himself mistaken in such an attempt to gull the people. All that the people wanted was to have the matter in their own power. If the question of banks or no banks were presented to the convention, nine-tenths of that body would vote against them. The same would be the result if that question were presented to the people. Yet nine-tenths of the people would insist on having the privilege of voting and instructing the legislature on the subject. He liked the proposition of his colleague (Mr. A. G. Cole) which was taken from the system adopted in New York. It was a sound and safe proposition and provided against the adoption by the legislature of a system that could impose upon the people. It contained many important provisions, one of which was that which made all joint stock associations corporations to sue and be sued.

Mr. Rountree said that before the question was taken he wished to state again that he was opposed to the principles contained in the amendment of the gentleman from Racine. He was opposed to what would constitute a general irresponsible banking system. He was opposed to banking in every sense, as it would be carried on here. If any provision at all for banking was adopted, he would prefer to have it made a separate subject on which the people could vote. Believing as he did that a majority of the people would vote the project down, he thought this would be the best way of getting rid of the question. He would therefore much prefer that the subject of banking should form a separate article. He took it for granted that there was not sufficient capital in the territory to carry on banking with safety or profit.

Mr. Rountree said that he could not but be amused by some remarks of the gentleman from Walworth (Mr. Estabrook) made the preceding day, to the effect that the Whig party in the convention, together with some of the Democrats, wished to force upon them a general banking law. He had himself opposed every project of banking and was not alone in so doing. One, at least, of his colleagues had made known his sentiments to the same effect. If the gentleman wished to identify the principles of banking with the principles of the Whig party, he would fail in his effort. He did not say that it was a Democratic measure, but it had been principally advocated on the floor of the convention by men who called themselves Democrats. He was quite willing that the Democratic party should have the credit of a general banking law, if one was adopted.

The gentleman from Racine (Mr. Sanders) had said that he was opposed to the principle of making the stockholders liable to any amount over and above what was held by them. Then he could not be willing to secure the bill holders to the full amount of the bills which they held. If any system of banking at all was adopted, he (Mr. Rountree) hoped that some principle would be provided by which the stockholders would be made liable to the full amount; otherwise we should have a wildcat system similar to that which had existed in neighboring states.

Gentlemen might say what they pleased about banking being a Whig measure. Let them look at those states which have suffered most from banks, and they would find them to be Democratic states. He liked to see gentlemen act up to the principles they professed. The proposition for banking was disclaimed as a Democratic measure; yet if forced through this convention at all it would be by Democrats. If such a proposition should be forced through the convention, he predicted that if it did not defeat the constitution it would prejudice it very much. He had seen no argument to show that the people wanted any such measure. If they wanted it they would petition for it. The subject had been most fully agitated by the people, particularly during the discussion of the old constitution, yet no petitions for banks had been sent to the convention. Gentlemen on the floor had sought to cover up their design. They have said the people wanted banks, without giving the least evidence of the expression of such a desire—they now sought to cover it up by means of a proposition to submit the question to the

people with general provisions adapted to the feelings of each separate part of the country, so that designing men might electioneer for it. He did not consider that there was the slightest objection to submitting the subject to a direct vote of the people. In that way he was confident the constitution would not be prejudiced; and he would predict that if it should be so submitted it would be voted down by a majority of four-fifths of the people. This was the reason why gentlemen were afraid to submit it in this manner.

Mr. Castleman said he arose to make not a speech but an apology. The peculiar position in which he was placed in relation to this subject imposed on him an obligation to do so. He represented a constituency on this subject of about 140,000 population, or over three-fifths of the whole territory. He believed that the object of appointing committees was that the subjects on which they were appointed might be condensed and brought before the body which appointed them in a form to be acted on. To reach this object properly it would be necessary that all parties interested should be fairly represented in the committee, and so far as his observation had gone such a rule had been universally followed, unless the present instance was an exception. By a reference to the names of the members of this committee, the counties which they represent, and to the census of the territory, it would be found as he had stated that he stood alone, the representative in the committee of five on this subject of more than three-fifths of the whole population of the territory, and of that portion, too, the most deeply interested in banking, of any. With so great a responsibility resting on him, his large constituency had a right to expect of him more than a silent vote. They would have a right to look for some recorded evidence that he was worthy of the high honor which had been conferred on him and that he was laboring for their interests. He acknowledged himself thankful for the high honor. He did not know how his constituents would feel in relation to the matter, but when he should tell them that he had in his life looked into two legislative halls, he did not doubt but that they would attribute the whole to his great legislative experience and duly appreciate the motives which thus honored him and took care of them. As the sole representative in the committee of the whole east, and south, and northeast, he had dissented from the report made by the majority of that committee to this convention and had expressed his dissent in a counter report, containing what he believed to be the views of a

very large majority of that part of the territory for which he had to speak; and it was his intention to have enforced those views this morning by such arguments and facts as he had collected, but he was very unwell, and unable to do so, and as he feared the subject might be disposed of before he was sufficiently recovered to be on the floor again, he had determined before leaving the hall to "ring in" this explanation and this apology for his not being heard more at length on this subject.

Whilst up, he would take occasion to say that he did not consider the question of a bank article or no bank article in the constitution the one to be discussed. If that question had not been settled by the thunder hurled at the old constitution, it was settled here. Every Democratic member who had spoken against banks had wound up by saying that he had expressed his "individual" opinion, but that public sentiment impelled him to vote for the admission of a banking clause into the constitution. Could anything be more decisive of public opinion and of its wants than this? He took that question, then, as settled, and the one to be discussed here was, what kind of banking article should they insert, and how far shall we trust the people to judge for themselves in this matter. Had he been well, it was his intention to have pointed out some of the fatal mistakes and errors which had rendered banking institutions unsafe and dangerous—to ask that they be placed as landmarks in the constitution, and that the convention leave the rest to the legislature and the people. He was no Democrat by profession, yet he feared not to trust the people. He believed that they would constitute a jury, amply intelligent and amply honest to try the claims of any bank article which might be submitted to them by the legislature, and more particularly if restricted by such provisions as were contained in the article which he had the honor to report. He could not vote for submitting an article, guarded as this was, to a separate vote of the people, as to whether it should be inserted in the constitution. The idea of asking the people whether, or how far, they would trust themselves was ridiculous in itself, and an insult to those of whom it was asked. Say that the legislature shall have no power to enact even a general banking law till the people have examined and approved the provisions under which it was to go into operation, and what more can be asked by these Democratic lovers of the people? The idea was preposterous, and he would not argue it. It was too much like boring auger holes with a gimlet.

very large majority of that part of the territory for which he had to speak; and it was his intention to have entered those views this morning by such arguments and facts as he had collected, but he was very unwell and unable to do so, and as he feared the subject might be disposed of before he was sufficiently recovered to be on the floor again, he had determined before leaving the hall to "ring in" this explanation and this apology for his not being heard more at length on this subject.

Whilst up, he would take occasion to say that he did not consider the question of a bank article or no bank article in the constitution the one to be discussed. If that question had not been settled by the thunder buried at the old constitution, it was settled here. Every Democratic member who had spoken against banks had wound up by saying that he had expressed his "individual" opinion, but that public sentiment impelled him to vote for the admission of a banking clause into the constitution. Could anything be more decisive of public opinion and of its wants than this? He took that question, then, as settled, and the one to be discussed here was, what kind of banking article should they insert, and how far shall we trust the people to judge for themselves in this matter. Had he been well, it was his intention to have pointed out some of the fatal mistakes and errors which had rendered banking institutions unsafe and dangerous to ask what they be placed as landmarks in the constitution, and that the convention leave the rest to the legislature and the people. There was no Democratic objection, yet he feared not to trust the people. He believed that they would constitute a jury, amply intelligent and amply honest to try the claims of any bank article which might be submitted to them by the legislature, and more particularly if restricted by such provisions as were contained in the article which he had the honor to report. He could not vote for submitting an article, guarded as this was, to a separate vote of the people, as to whether it should be inserted in the constitution. The idea of asking the people whether, or how far, they would trust themselves was ridiculous in itself, and an insult to those of whom it was asked. Say that the legislature shall have no power to enact even a general banking law till the people have examined and approved the provisions under which it was to go into operation, and what more can be asked by these Democratic lovers of the people? The idea was preposterous, and he would not argue it. It was too much like boring sugar holes with a gimlet.

Before resuming his seat, he must briefly notice the remarks of the gentleman from Avon, Shakespeare's "old friend" (Mr. Estabrook). That gentleman said that the scene here reminded him of a madman who had escaped from a madhouse and imagined that everybody he met was crazy; that the Whigs seemed to him to be crazy at the prospect of getting a bank; that the Democrats seemed more than half crazy on the same subject. Well, he must say that the gentleman was very felicitous in his remarks, if they were intended to illustrate the case of the madman who imagined everybody else crazy, for it would not be forgotten that of all the Whigs who had taken part in this discussion, but one had favored banking; the rest—some three or four—had opposed it in every shape—wholly, unconditionally. Nor was this all. The gentleman had told us with what indignation the Whigs of his county could hardly restrain their hisses at an eminent lawyer from Milwaukee, who spoke last spring in favor of banks, and yet the gentleman "imagined" the Whigs all "crazy" at the prospect of getting banks. Verily, the gentleman in the description of his madman very forcibly reminded him of a quotation from "his old friend" Byron, who said that

All who saw the idiot in his glory,
Conceived the bard the hero of his story.

Sir, I am at home a Whig and "nothing else." I am in favor of inserting into the constitution an article allowing banking, when the public decide that banking is expedient. But on this floor, sir, I am a member of no party. I was elected to assist in framing a constitution to be the fundamental law for all parties, and I cannot make that sacred trust subservient to party purposes. But as the gentleman from Avon has dragged the Whig party into the contest, as a party, I must be permitted to say that—whilst it has been impossible to tell from the course taken by the Democrats here which side of the question they advocated—whilst they are opposed to banks from principle, they favored them for popularity. Whilst the Democrats have here disputed and wrangled as to whether their party was a bank party or an antibank party; whilst the Democratic chairman of the committee on banking has expressed himself opposed to all banks but reported himself in favor of banking in its most odious feature and recommended to this body to insert in the constitution an article accordingly; I say, whilst all this legerde-

main has been enacting here, every Whig who has taken part in the discussion has come boldly, openly, honestly to the point, and expressed himself decidedly on one side or the other. Yes, sir, whilst the Democrats here have done nothing else but "chaussi" right and "chaussi" left, every Whig has been found dancing square to the fiddle. This, at least, will not be denied.

I would call the attention of this body to the remarks of the gentleman from Fond du Lac, indignantly repudiating the idea that Democrats were bank men. Sir, on the fifty-third page of the journal of the old convention will be found a very liberal bank article, introduced by the gentleman from Fond du Lac as an amendment to a no-bank proposition then pending.

Beall—The gentleman from Marquette introduced that amendment.

Castleman—It bears your name, sir, and I believe there was but one of the name in the other convention.

Beall—Another man, sir.

Castleman—Oh, ho! If the gentleman, in changing his constituency, has "progressed" so rapidly as to deny his identity, I press him no further.

Mr. Jackson said that some of the arguments which had been used on this subject in the convention were, to say the least of them, rather paradoxical. Gentlemen had arisen and declared their utter hostility to banks, and in the same breath had gone on to present propositions by which they might be created. Some Whigs had argued long and ably in favor of some kind of bank project, while others were altogether opposed to anything of the kind. The same was the case with the Democrats. The gentleman from Racine (Mr. Sanders) had spoken of the principles of the Democratic party in reference to banking and had said that for seventy years the party had been at war with banks. His own knowledge did not go so far back, but he knew that for ten or twenty years the Democratic party had been opposed to all connection between the government and banks, to all special charters, special privileges, and chartered monopolies; but never as a party had they made war upon all banks, nor had any party done so. They believed that the system of banking as carried on in this country was carried on in its worst form. He would leave the question of banking to other gentlemen. One word in regard to the proposition of submitting this question in a separate article to the people. He could see no more propriety in

submitting the question of banks in a separate article, than any other question; and at one time he had been almost inclined to propose—to see if some gentleman would not vote for the proposition—that the constitution should be submitted in separate articles to the people, to be voted on at every town meeting, article by article. For his own part, he did not desire to dodge any responsibility and he could not consider this project of submitting the bank article separately to the people in any other light than an effort to avoid responsibility. One view of the matter had struck him in rather a peculiar manner. Suppose that if the article were submitted separately, the people should reject the constitution and adopt the bank article. Would not the bank article then be the constitution of the state?

Mr. Chase could only say that if the Democratic party had not repudiated banks, it was high time they did so. He could not understand by what system of figures the gentleman from Waukesha could make out that he represented three-fifths of the population of the territory. It was certainly not in his views on banking, for at least four-fifths were opposed to him in them. Mr. Castleman explained that he had reference to particular localities. He supposed the committee was selected so as to represent particular portions of the country. If the gentleman would look at the portion which he represented, he would perceive that he was right. Mr. Chase said he was still at a loss to know how the gentleman from Waukesha could represent 140,000 people—three-fifths of the entire population of the territory. He had no idea that so large a population resided in Waukesha County. But let that pass. One word in answer to the severe remarks of the gentleman from Racine (Mr. Sanders) in reference to the committee of which he was chairman having reported an article which they knew would not be adopted. The reason for the hostility of that gentleman to the article was that by it bill holders were amply and sufficiently secured. That was the great objection of the gentleman from Racine, for he well knew that no company would commence banking without reserving to themselves some opportunity of swindling the people. The same gentleman had also remarked that the same law which applied to partnerships should not be applied to banks, for the reason that the stock deposited was ample security and would be liable for the debts of the bank. Has the stock deposited ever been sufficient security? Let us apply to history for an answer. If so, we should have had no frauds in banking. Every member of a corporation

was a partner in the concern and should be held personally and individually liable.

Mr. Fox said a great deal of time had been consumed upon the subject now before the house, and for his own part he had not intended to perpetrate anything more at the expense of this patient and long-suffering convention. A large and respectable portion of his constituency, however, required him to support some kind of bank. He was, himself, when at home a regular wool-dyed, anti-wildcat-bank Democrat and should always go against banks. Still he intended to vote for the report of the majority, out of respect to the feelings of a large minority, and because banks and banking were therein guarded by a strict system of responsibility. In the amendment before the convention, said Mr. Fox, we have forced upon us under the semblance of equal rights a wildcat banking system of the worst kind. No equal rights are in fact given by it. None but capitalists can undertake banking. Do gentlemen expect us to vote for such a law, or even to submit it to the people? It is true, the people may be trusted, but by some system of electioneering they may be cheated into voting for a general banking law; and when the gate is once lifted, utter ruin may follow. A bank may be established at every corner. They may be as plenty as blacksmiths' shops. With what consistency can gentlemen talk of hydras, who are at the same time antibank in their speeches and probank in their propositions? Let them rather compare their own projects to the beast with seven heads and ten horns.

I learned yesterday for the first time (continued Mr. Fox) that the Democratic party were in favor of a wildcat system of banking. My constituents expect no such thing at my hands. On the contrary, they were generally satisfied with the provisions of the last constitution in this respect, with the exception of the celebrated sixth section. Why do gentlemen say that public opinion calls for banks now, when it did not last spring? I ask that some gentleman will explain in what manner the people ask this at our hands. They have sent in no petitions on the subject, and certainly if they desired banks they would take this mode of making known their wishes.

Mr. Kilbourn said he was sorry that it became his duty to say anything on this subject. It had become necessary for him, however, to define his position. Gentlemen had talked long and loud in reference to wildcat banks and special charters. He could not

see why a general charter could not be guarded as well as a special one. Why make a distinction between the two charters? The people could be secured as well under the one as the other. Gentlemen have said that the people do not want banks in any form. Why, then, trouble ourselves about them? If the people desire such a system as is embodied in the report of the committee, they do not want a bank. Why, then, force such a thing in any form upon them? He would be found in all his votes going for an entire separation between the interests of the government and banking. No marriage has yet been contracted between these interests, and he trusted none would be consummated. All he wished to see in the constitution on the subject was this: "The legislature shall have no power to incorporate any banking institution in this state."

Mr. A. G. Cole called for a division of the question. The question was then put first on striking out, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 23, negative 41; for the vote see Appendix I, roll call 91].

Mr. Beall moved to amend section 3 by striking out the words "or some paying state in the United States," which was agreed to.

Mr. Judd moved that the convention take a recess until half past two o'clock P.M., which was agreed to.

HALF PAST TWO O'CLOCK P.M.

No. 4, article on banks and banking, was taken up, when Mr. Judd moved to amend the amendment as follows: "Strike out in the first section the words 'either general or special,' and insert the word 'special' before the word 'land' ['bank?'] in the same section, and add at the end 'except such as are provided for in the following section of this article.'"

"Strike out all after the first section and insert, as section 2, as follows: 'Section 2. No general law authorizing banking in any manner or under any pretense whatever shall ever be passed by the legislature of this state unless the said law be general in its terms and convey rights equally to every person. Such law shall not take effect or be in force unless it shall have been submitted to the electors of this state at a general election and shall have received in its favor a majority of all the votes cast at such election upon that subject.'"

Mr. Judd spoke at considerable length in support of this amendment.

Mr. O. Cole congratulated the convention on the introduction of this proposition on which all might unite, as the gentleman had said. He recollected back forty-eight hours, when the gentleman from Dodge was advocating with much earnestness things which

were directly opposite to those he now proposed. If other gentlemen could change their views as easily, or had as much ingenuity to reconcile inconsistencies, perhaps they might unite on this proposition or almost any other; but he doubted whether it were possible as things stood. He thought if the convention could not agree, they should submit the question to the people in a separate article. True, the gentlemen from Dodge saw a great many objections to this, but he had seen and said the contrary in parallel cases before, and he thought that whatever they might do in regard to it, or whatever system they might establish—special charters, wildcat, or even a total prohibition—they would be able to quote the gentleman from Dodge in favor of it. He hoped the amendment would not prevail.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 23, negative 39; for the vote see Appendix I, roll call 92].

Mr. Bishop moved to amend the article by striking out all after section 1, which was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 31; for the vote see Appendix I, roll call 93].

Mr. Beall moved to amend the amendment by adding the following as section 10, to wit: "Section 10. The legislature shall limit the aggregate amount of bank notes to be issued by all the banks and associations which may exist in this state."

Mr. Whiton spoke in opposition to the amendment, Mr. Beall in favor. Mr. Kinne said that if the gentleman was in favor of legislative restrictions as to the gross amount of bills to be issued, he could not see the force of his argument. He could see nothing in any of the propositions now before the convention to indicate that banking would be overdone; and he would want to see strong reasons to induce him to go for legislative restrictions upon the amount. The quantity of capital being limited, and that limit being far below the quantity actually required in the commercial wants of the country as shown by the high rate of interest, no maximum is needed. There was a great disposition abroad to tamper with the currency. Different financiers were continually proposing different schemes in the legislature and seeking to carry them out. The frequent changes of policy thus occasioned were disastrous to the business of the country. The safe and true theory in regard to currency was to allow the quantity which the natural wants of business

were directly opposite to those he now proposed. If other gentlemen could change their views as easily, or had as much ingenuity to reconcile inconsistencies, perhaps they might unite on this proposition or almost any other; but he doubted whether it were possible as things stood. He thought if the convention could not agree, they should submit the question to the people in a separate article. True, the gentlemen from Dodge saw a great many objections to this, but he had seen and said the contrary in parallel cases before, and he thought that whatever they might do in regard to it, or whatever system they might establish—special charters, without or even a total prohibition—they would be able to quote the gentleman from Dodge in favor of it. He hoped the amendment would not prevail.

The question was then put upon the adoption of the same, and was decided in the negative. And the eyes and noses having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 55; for the vote see Appendix I roll call 92].

Mr. Bishop moved to amend the article by striking out all after section 1, which was decided in the negative. And the eyes and noses having been called for and ordered, those who voted in the affirmative were [affirmative 36, negative 21; for the vote see Appendix I roll call 93].

Mr. Beall moved to amend the amendment by adding the following as section 10, to wit: "Section 10. The legislature shall have the power to issue bank notes to be issued by all the banks and associations which may exist in this state."

Mr. Whitton spoke in opposition to the amendment. Mr. Beall in favor. Mr. Kinne said that if the gentleman was in favor of legislative restrictions as to the gross amount of bills to be issued, he could not see the force of his argument. He could see nothing in any of the propositions now before the convention to indicate that banking would be overdone; and he would want to see strong reasons to induce him to go for legislative restrictions upon the amount. The quantity of capital being limited, and that limit being far below the quantity actually required in the commercial wants of the country as shown by the high rate of interest, no maximum is needed. There was a great disposition abroad to tamper with the currency. Different financiers were continually proposing different schemes in the legislature and seeking to carry them out. The frequent changes of policy thus occasioned were disastrous to the business of the country. The safe and true theory in regard to currency was to allow the quantity which the natural wants of business

demanded. If the gentleman wished to fix a permanent maximum in the constitution, it would do no harm any further than it would be absurd; but if it were left to the legislature to increase or diminish it at pleasure, it gave them a great power for mischief over the whole business of the country, which they would be very likely to exercise injuriously. There would be no such thing as free banking, absolutely. No such proposition had been submitted here. All of them have imposed some restraints—some more, some less. None of them gives to every individual the right of banking on just as small a capital as he would choose, which alone would be free banking. Some restrictions had always been imposed and were necessary. It might be some infringement upon the metaphysical “right” of the people, but in a civilized community it was absurd to talk against them on that account. If the bill should pass, he would prefer that the power of fixing the maximum should not be given up to the legislature. He thought there would be few banks established here for a number of years, unless the rate of bank interest were raised to twenty or twenty-five per cent or unless they should be allowed to issue bills to twice or thrice the amount of their capital stock paid in, neither of which propositions formed a part of any plan now before the convention. Private individuals could lend their money at from fifteen to twenty-five per cent interest, which was far more profitable than investing it in banking.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 38; for the vote see Appendix I, roll call 94].

Mr. Sanders moved to amend the amendment by adding as section 11 the following: “No association or body corporate created by law, except such as are created for banking purposes, shall be in any manner concerned in receiving deposits, making discounts, or issuing any bills, promissory notes or other evidences of debt for the purpose of loaning them or putting them in circulation as money.” The question was then put upon the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 26; for the vote see Appendix I, roll call 95].

Mr. Harrington moved to amend the fifth section as follows: “Insert after the word ‘shall’ the words ‘not be of a denomination less than five dollars, and the same be.’”

Mr. Sanders said it was one great fault in the last constitution that it prohibited the circulation of small bills. He was in favor of the principle, but experience showed that it was impossible to carry

it out. We could not prohibit the circulation of small bills among us from other states. If we prohibit our banks from issuing them, therefore, we shall affect them injuriously without at all reaching the evil we are aiming at. The experiment had been tried in New York and failed wholly.

Mr. Kinne said he would vote for the amendment. It was liable to the objection which the gentleman had stated, to some extent, but not to so great an extent, he thought, as the gentleman supposed. There was a tendency in the business world at this time to put away the use of small bills and substitute specie in their stead. This tendency was beneficial to any banking system; and it was a sign of health that banks in general had countenanced it. If gentlemen looked to the interest of the public and not to that of the stockholders wholly, they would encourage the same in the system we are now establishing. It would keep a large amount of specie among us, which would be highly beneficial to the banks themselves in any emergency. It was a well-established fact that bank bills and specie could not circulate together. It was natural for a man to pass off the worst money he had first. A bad bill would circulate much faster than a good one; and any bill would circulate faster than specie because every man held on to his specie and parted with that last. A counterfeit would circulate fastest of all. This was human nature. Where five-dollar bills circulated, few sovereigns or one-half eagles were seen; and where one-dollar bills circulated, few silver dollars were seen. The only reason we had silver dollars here was because we were near the land offices, near the mines, and near Missouri, where there was a sound specie basis for their system of banking. He hoped the amendment would prevail. It was assuming no doubtful power, and he thought the expediency of it was hardly doubtful.

Mr. Judd spoke.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 29, negative 32; for the vote see Appendix I, roll call 96].

Mr. Larrabee moved to amend the amendment by striking out all after the word "state" in the first section and inserting the following: "*Resolved*, That the following sections shall be submitted when the votes of the electors shall be taken for the adoption or rejection of this constitution, to be voted upon separate and distinct from the body of the constitution. The votes given upon those sections shall be deposited in a separate box and shall have

on them the words following: 'Banks—yes' on those votes in favor of the adoption, and 'Banks—no' on those votes against the adoption of said sections. And if a number of votes equal to a majority of all the votes cast for and against the said constitution shall be 'Banks—yes,' then said sections shall take the place of section 1 of the article entitled 'Banks and Banking' in the body of said constitution. But if a number equal to a majority as aforesaid shall be 'Banks—no,' then said sections shall be rejected and section 1 in said article shall be and remain in full force."

And the question being put on its adoption, Mr. Jackson called for a division of the question. The question was then put first upon striking out, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 42, negative 16; for the vote see Appendix I, roll call 97].

Mr. Beall moved that the vote just taken be reconsidered. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 19, negative 41; for the vote see Appendix I, roll call 98].

The question was then put upon inserting the amendment proposed by Mr. Larrabee, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 27, negative 34; for the vote see Appendix I, roll call 99].

Mr. Sanders moved to amend section 4 by striking out the words "in the city of New York."

He said New York was the worst place in the country in which to have stock appraised. Everyone knew that the Wall Street operations in stocks were a perfect system of gambling, not regulated at all by their actual value. Our banks would be wholly at their mercy in case we should not make this amendment.

Said amendment was agreed to. And a division having been called for, there were 23 in the affirmative and 15 in the negative.

Mr. Kilbourn moved to amend the amendment by striking out section 4, which was agreed to.

Mr. Jackson moved to amend the amendment by striking out section 1.

Mr. Chase said he had not intended to take any part in the discussions upon the amendments offered, till the friends of the article had had time to amend it to their satisfaction; but from their course he must be allowed to say that he thought they would soon get it into such a shape that they would not vote for it themselves. He was glad of it and hoped we should soon take a vote on it and reject it altogether.

The amendment was agreed to.

Mr. McClellan moved to amend the amendment by striking out in section

6 after the words "exceeding the" the word "appraised"; also by striking out all after the word "security" in said section, which was agreed to.

Mr. Harvey moved to amend the article by striking out the whole report of the committee and inserting as follows:

"Section 1. The legislature shall not have power to pass any law which shall create any bank or grant to any person or persons whatever any banking power or privilege.

"Section 2. The legislature shall not have power to pass any law which shall prohibit or restrain persons or associations from issuing their own notes or other evidences of debt in any form they may think proper, to circulate as currency."

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 15, negative 46; for the vote see Appendix I, roll call 100].

Mr. Chase moved that the convention adjourn, which was agreed to. And a division having been called for, there were 34 in the affirmative and 21 in the negative. So the convention adjourned.

By Mr. Dorian: "Whereas, the desks and chairs of members are every morning found covered with dust, and whereas, of the two evils, dust on the carpet is more tolerable than on the desks and chairs, and whereas, the office to whom the dusting of the chamber has been assigned by the proper authorities has nothing whatever else to do; Resolved, therefore, That the sergeant at arms be and is hereby instructed to see that the hall be properly swept every morning for the reception of the members, and that he report to the convention any officer who will not perform his duty."

By Mr. Lovell: "Resolved, That the thirteenth rule be so altered that a motion to strike out and insert shall be deemed indivisible."

No. 4, article on banks and banking, was then taken up.

Mr. Richardson asked whether it would be in order at this stage of proceedings to offer a substitute to the whole article. The President decided that it would not.

Mr. Kibbourn moved to amend the article by striking out all after the word "privilege" in the first section and inserting the following: "But in case the separate article entitled 'Free Banking,' which is appended to this constitution and [which is to be] submitted separately to a vote of the people for their adoption or rejection, should be adopted by a majority of the votes given on that subject, then and in that case it shall be lawful for the legislature to pass general laws on the subject of banking, conformably to the provisions of said separate article; and said article, if so adopted, shall be a part of this constitution and shall be appended to and form a part of the article."

THURSDAY, JANUARY 13, 1848

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read and corrected. Mr. Castleman asked leave of absence for Mr. Cotton. Leave was granted.

Resolution No. 2, introduced by Mr. Case on the eleventh instant, was taken up, when Mr. Judd moved that the same be indefinitely postponed. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 35, negative 24; for the vote see Appendix I, roll call 101].

Resolution No. 4, introduced by Mr. Gifford on the eleventh instant, was taken up, when Mr. Lewis moved that the same be referred to the select committee on that subject, which was agreed to.

Resolution No. 3, introduced by Mr. Harvey yesterday, was taken up, when Mr. Harvey asked leave to withdraw the same. Leave was granted. Resolution No. 3, introduced by Mr. A. G. Cole on the eleventh instant, was then taken up. And the question having been put upon the adoption of the same, it was decided in the negative.

Resolutions were introduced and read as follows, to wit:

By Mr. Doran: "WHEREAS, the desks and chairs of members are every morning found covered with dust, and WHEREAS, of the two evils, dust on the carpet is more tolerable than on the desks, and chairs, and WHEREAS, the officer to whom the dusting of the chamber has been assigned by the proper committee has nothing whatever else to do; *Resolved*, therefore, That the sergeant at arms be and is hereby instructed to see that the hall be properly prepared every morning for the reception of the members, and that he report to the convention any officer who will not perform his duty."

By Mr. Lovell: "*Resolved*, That the thirteenth rule be so altered that a motion to strike out and insert shall be deemed indivisible."

No. 4, article on banks and banking, was then taken up.

Mr. Richardson asked whether it would be in order at this stage of proceedings to offer a substitute to the whole article. The President decided that it would not.

Mr. Kilbourn moved to amend the article by striking out all after the word "privilege" in the first section and inserting the following: "But in case the separate article entitled 'Free Banking,' which is appended to this constitution and [which is to be] submitted separately to a vote of the people for their adoption or rejection, should be adopted by a majority of the votes given on that subject, then and in that case it shall be lawful for the legislature to pass general laws on the subject of banking, conformably to the provisions of said separate article; and said article, if so adopted, shall be a part of this constitution and shall be appended to and form a part of this article."

amendment before it was struck out. According to the decision of the Chair, it was now impossible for him to resuscitate his proposition. Such being the fact, and as he could not now offer it as a

RESOLUTION TO SUBMIT THE ARTICLE ON FREE BANKING TO A SEPARATE
VOTE OF THE PEOPLE

"Resolved, That the following article be submitted to the people, to be voted upon separate and distinct from the body of the constitution. The votes given on that subject shall be deposited in a separate box and shall have on them written or printed [or partly written and partly printed] the following words: 'For free bank article' on those votes in favor of adoption, and 'Against free bank article' on those votes against the adoption of said article; and if a majority of said votes be 'for,' then said article shall be adopted; but if a majority of said votes be 'against,' then said article shall be rejected."

FREE BANKING

"Section 1. The legislature shall have power to pass general laws for the purpose of authorizing corporations or associations to transact banking business; but all such laws shall be conformable to the following provisions in this article contained.

"Section 2. No corporation, institution, association, person or persons shall issue any bill, note, or other paper in the form of bank bills, or in any other form intended to circulate as money, except in pursuance of laws authorizing such issue, passed and approved agreeably to the foregoing section of this article.

"Section 3. The legislature shall not have power to pass any law sanctioning in any manner, directly or indirectly, a suspension of specie payments by any person, association, or corporation issuing bank notes, or notes for circulation as money, of any description.

"Section 4. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money and shall require ample security in stock of the United States for the redemption of the same in specie.

"Section 5. In case of the insolvency of any bank or banking association, the bill holders thereof shall have preference in payment over all other creditors of such bank or association.

"Section 6. The stockholders in every corporation or association for banking purposes, issuing bank notes or any kind of paper credit to circulate as money, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind."

Mr. Kilbourn said that he had offered in committee of the whole an amendment to an amendment which was a substitute for the whole article, but had withdrawn it to oblige the gentleman from Racine, Mr. Sanders, who claimed the right to amend the first amendment before it was struck out. According to the decision of the Chair, it was now impossible for him to resuscitate his proposition. Such being the fact, and as he could not now offer it as a

substitute for the article reported by the committee of the whole, he proposed the amendment he now offered as a means of securing the object he had in view. If his amendment prevailed he would then submit a substitute for the articles struck out.

Mr. Prentiss inquired whether it was in order to act on the original article before acting on the report of the committee of the whole. The Chair explained the position of the question.

Mr. Whiton made some remarks.

Mr. Chase called for a division of the question. And the question having been first put on striking out, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 40, negative 22; for the vote see Appendix I, roll call 102].

Mr. Chase moved to amend the amendment by striking out the word "free."

He said there was no such thing as "free banking," and he was utterly opposed to allowing banks to sail under false colors.

Mr. Kilbourn hoped that Mr. Chase's amendment would not prevail; for, whether gentlemen might think the term applicable or not, it was the term by which the system of banking contemplated by the proposition was generally known. He had once listened to a humorous story of a man who called his son "Yonkee," and the reason he assigned for doing so was that "Yonkee" was his name. There was a difference of opinion as to whether the name was applicable, but that must be decided according to taste. We have such a term as "free trade." It was not pretended that every individual would have his ship upon the waters, but that trade was free to every citizen who should chance to avail himself of this freedom. Every man in the country was ready to fight for "free trade and sailors' rights." Trade was free to all who chose to engage in it. That was all that was meant by "free banking." Mr. Kilbourn said that he wished to obtain an expression of opinion from the convention on the question of submitting the bank article as a separate and distinct proposition to the people. This proposition was nearly identical with that of Mr. McClellan, except that it contained a provision for separate submission to the people. The question was narrowed down to the single point, whether the article should be submitted separately or incorporated in the constitution. If a majority of the convention should decide against a separate submission, he would be content to abide by their decision. If they de-

cided otherwise, he assumed as a matter of course that the minority would yield.

Mr. Sanders thought that on this question of banks we might well barter ten acres of unexplored sea for one of good sound turf. On looking over his files, he found that on the first day of the session the gentleman from Milwaukee (Mr. Kilbourn) brought in several propositions on the subject of banks, to be distinctly embodied in the constitution—propositions which were wise and which, if adopted, would have materially facilitated the business of the convention. If these propositions reflected the views of that gentleman's constituents, why did he fly from them? In the remarks which he himself had made he believed he represented the views of his constituents. He thought that the views first entertained by the gentleman from Milwaukee truly represented the wishes of that gentleman's constituents. He called upon him to stand up for them now. He hoped the convention would go back to what he conceived to be the proper issue before it, whether a general or a special law should be incorporated in the constitution.

Mr. Beall spoke.

Mr. Chase, in reply to Mr. Kilbourn, said that it seemed to him that the gentleman from Milwaukee evaded the true point—he seemed disposed to take things by the smooth handle. If the boy's name was "Yonkee," it was right to call him so. The true name of the banks to be incorporated by the proposed system was "wildcat," and "wildcat" they should be called. In the distinction which the gentleman from Milwaukee had drawn between his proposition and that of the gentleman from Racine (Mr. McClellan) there was one very essential difference which he had overlooked. In the latter proposition was a clause providing for the individual liability of stockholders to the full amount. There was no such clause in Mr. Kilbourn's proposition. This involved so great a difference, that he, though friendly to the principle of separate submission, would be compelled to vote against Mr. Kilbourn's proposition.

Mr. Kilbourn replied that there was a great difference between his proposition and what was commonly called the "wildcat" system of Michigan. That system allowed real estate to be taken as security. The whole system was a fiction. His proposition required as security a deposit of United States stock to the full amount of the issue. It was an absolute security—dollar for dollar. And the system was free to all who had capital to embark in it. In answer to

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the gentleman from Racine he would state that the first proposition he submitted was to insert in the constitution an article similar to that adopted in New York with one or two additional safeguards. One restricts the security to United States stocks alone. Another restricts individuals from issuing paper for circulation. The inconsistency with which that gentleman charged him consisted in this: that his former proposition required that the act of the legislature creating banks should be submitted to the people, whereas his present proposition provided that the bank article should be first submitted to them. To him this was a matter of indifference. His only reason for adopting the latter course was, as he had stated on a former occasion, that some people were so radical in their opposition to banks that he believed they would oppose any constitution which contained a bank article. This was a question for the convention to decide, and one course was as much in conformity with his views as the other.

Mr. Richardson said that it appeared to him that they had all got wrong on this subject of banks. Every proposition of every gentleman seemed to have in view some particular system of banking. Members were not assembled in convention to decide on a banking system; they were convened to form a constitution. Gentlemen argued that if the article were left in the constitution, the people would vote against the constitution on that account. But if any proposition in detail is presented to the people, we get an expression of opinion from them only on this particular proposition. He was decidedly in favor of leaving the subject entirely open—authorizing the legislature to pass some law on the subject, to be submitted to the people.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 18, negative 43; for the vote see Appendix I, roll call 103].

Mr. Prentiss moved to amend the amendment by substituting the following: "Section 2. The legislature may at any regular session authorize banking by a general law, conveying rights equally to any person; but such law shall not take effect, unless the same shall have been first submitted to a separate and distinct vote of the electors at the next general election succeeding the passage of the same, and shall have received in its favor a majority of all the votes cast at such election.

"Section 3. The stockholders in every bank or banking association shall be individually liable to the full amount of all its debts and liabilities; and

in case of the insolvency of any such bank or banking association the bill holders thereof shall have preference in payment over all other creditors of such bank or association.

"Section 4. The legislature shall provide by law for the registry of all bills and notes issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

"Section 5. The legislature shall not have power to authorize any bank or banking association to suspend specie payments.

"Section 6. The legislature shall limit the amounts of notes to be issued by any bank or association which may be established within this state.

"Section 7. Any law passed under the provisions of this article may be amended or repealed in the same manner as the said law shall have been enacted, and in no other manner."

Mr. Prentiss remarked that it did not materially differ from the proposition which had been submitted by Mr. McClellan. He was opposed to the plan of submitting the bank article separately to the people, because it involved a double submission. One submission was enough; and a proposition should be incorporated which should require one. The proposition of Mr. Kilbourn provided that the stockholders should be liable only to the amount of their stock. He could vote for no proposition which did not require full liability. He could not see why the same principle which applied to partnerships should not apply to banks. The bill holders derived no profit from banking associations. The direct profit was to the stockholders, and if any loss occurred they should sustain it. If the security was ample, then the stockholders would sustain no loss, and the principle of individual liability if applied to them could do them no injury.

Mr. Estabrook had no great choice between the two propositions, except as regarded the point of separate submission to the people. He should certainly yield his support to that principle. He was in favor of commencing with an antibank basis, at the same time leaving it to the people whether they should have banks or not. As to the details of the proposition, he left them to other gentlemen. All knew that the question of bank or no bank had been constantly argued since the origin of the government. He thought it could not but have a salutary effect to submit this question to the people in their primary capacity. The question would then be settled in the incipient condition of state government. Let the great idea involved by this question go before the people, and the important principle which has agitated the country from Maine to Georgia be finally settled and disposed of when we first enter upon state government.

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Mr. Sanders declared his intention to vote for Mr. Prentiss' amendment and against the proposition submitted by Mr. Kilbourn, because he was opposed to the principle of a separate submission of the question to the people and also to some of the details of Mr. Kilbourn's proposition. It was proposed to submit the article separately to the people; and in case the people should adopt the article, the legislature could go on and incorporate banks without guard or check. Every corporation, every railroad company, every irresponsible establishment like that already existing in Milwaukee and which he could not designate otherwise than as a curse to the people and a sore on the body politic, might issue a currency. He was opposed to the principle of making the stockholders liable beyond the amount of their individual stock. In limited partnerships the partners were liable only to the amount which each paid in: the same principle applies to bankers. If the security given by the stockholders consisted of specie, no one would require individual liability on the part of the stockholders. If it consisted of state stock or bond and mortgage, it might be liable to depreciation. If, then, the stockholders were made liable to the amount of stock which each held individually, there would be abundant security against loss by such depreciation.

Mr. Judd read to the convention a list of bank failures in the state of New York.

Mr. Castleman regretted that Mr. Prentiss had submitted his proposition at that time and hoped he would withdraw it. The gentleman from Milwaukee (Mr. Kilbourn) had expressed his opinion that the vote on his proposition would be a settler on the question of a separate submission of the article to the people. He was opposed to the proposition, but anxious that the question should be settled. That gentleman was so good a Democrat that he (Mr. Castleman) felt confident he would, if the proposition should be voted down, come in and work with the majority. Mr. A. G. Cole said that he would be compelled to vote against the proposition of Mr. Prentiss or any other proposition which should contain a particular bank system. He would also vote against a separate submission of the article. He was willing that the question of bank or no bank should be tried in the convention, and if the majority said "No bank" he would be satisfied. He would not vote for any proposition in detail to be engrafted in the constitution.

Mr. Vanderpoel deemed it his duty to define his position on the subject before the convention. His opinion of banking institutions had long since been settled. He regarded them, in the language of the poet, as

Monsters of so foul a mien,
As to be hated need but to be seen.

He was opposed to banks in all their phases, but was willing that the legislature should have power at any time to present the subject to the people. If, at any future time, the legislature should cause the people to vote on the question, and the people should vote in favor of banks, then let the legislature pass a charter, and before it goes into effect let it go before the people for their suffrages. Mr. Vanderpoel said that if an opportunity should present, he would submit such a proposition to the convention.

Mr. Lovell said that Mr. Prentiss' proposition contained nearly all that should be expressed in detail, as forming a part of the constitution, if anything should; but it did not contain one good provision which was contained in the proposition of Mr. Kilbourn; that was the requirement of United States stock for security. Inasmuch, therefore, as Mr. Prentiss' proposition went into detail and did not contain that provision, he could not vote for it. He was more and more convinced, on reflection, that a separate submission to the people was not the thing. No man could vote understandingly on the constitution unless he knew what it contained. If the article were submitted separately, those who voted for the constitution would not know whether they were voting for a constitution which would authorize banking or not. The constitution should be submitted to the people as a whole. He thought Mr. Kilbourn's proposition highly objectionable, inasmuch as if the people should vote in favor of banks, the legislature could go on and make them without submitting them to the people. The gentleman from Jefferson before him (Mr. Vanderpoel) had detailed a plan which met with his entire concurrence, so that with a view of bringing it forward, if for no other reason, he would vote against both of the other propositions. He understood, also, that one of the members from Milwaukee (Mr. Larkin) had a proposition to the same effect as that sketched by Mr. Vanderpoel, by which all the difficulties arising from detail and submitting to the people and all objections whatever were obviated.

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The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 4, negative 57; for the vote see Appendix I, roll call 104].

Mr. Larkin moved to amend the amendment by substituting the following: "Section 2. The legislature of the state shall have power to submit to the voters at any general election the question of 'bank or no bank'; and if at any such election a number of votes equal to a majority of all the votes cast at such election shall be in favor of banks, then the legislature shall have power to grant bank charters or to pass a general banking law, with such restrictions and under such regulations as they may deem expedient and proper for the security of bill holders: *Provided*, That said law shall have no force or effect until the same shall have been submitted to a vote of the electors of the state at some general election and been approved by a majority of all votes cast at such election."

Mr. Kilbourn requested Mr. Larkin to withdraw his proposition in order to have an opportunity of ascertaining the sense of the convention on the question of submitting the article to the people. Mr. A. G. Cole hoped that Mr. Larkin would grant the request of Mr. Kilbourn. He thought that the convention would vote down Mr. Kilbourn's proposition in less time than they would take to talk about it. Mr. King hoped that Mr. Larkin would insist upon his amendment. It afforded the first glimpse of day after groping four days in the dark. He could see no other way of getting at the question. It offered a compromise ground on which all could meet. Mr. Kilbourn urged the withdrawal of the amendment. Mr. O. Cole said that he would feel bound to support Mr. Larkin's proposition. Gentlemen might be here beating the wind forever, all being in favor of submitting an article to the people, but none agreeing as to what they should submit. Mr. Chase regarded Mr. Larkin's proposition as a middle ground on which all parties could meet. He would vote for it. He wished, however, that a vote could have been taken on Mr. Kilbourn's amendment, to show him how easily the convention would have killed his bantling. Mr. Vanderpoel said that he would support Mr. Larkin's amendment. It was substantially the same as the one which he was about to propose. It was the only common ground. Mr. Scagel spoke in support of Mr. Larkin's amendment; but his remarks were inaudible to the reporter on account of noise in the hall.

Mr. Castleman inquired whether, if the proposition now before the convention was adopted, it could be amended. The President said no.

Mr. Castleman: Mr. President—I shall oppose this proposition as being the most perfect fraud upon the people of any that has been presented to this convention. Why, sir, what does it amount to? Requiring a majority of all the votes cast at such election to enable the legislature to act at all in the matter, then requiring a majority of all the votes cast at such election to make it a law, is an utter prohibition of all banking; whilst it holds out to demagogues, if there are any such in this convention, the opportunity to show to their bank constituents distinctly that they voted for a bank provision, and at the same time to show to their antibank constituents that they voted for it because it amounted to an utter prohibition of all banks. Why will not the gentleman allow his amendment to be so altered as to require a majority of the votes cast “on that subject” to authorize legislative action, and the same majority to enact the law? Why, sir, because this would be giving the people “a chance.” But, sir, we all know how easy it is at a general election (and it is at such that this question must be submitted) where hundreds—aye thousands—of men who vote for particular candidates are dissuaded from voting at all on a subject like this. We all know how easy it is at an election like this for the political wireworkers to withhold ballots from those who would vote on this subject were the ballots before them, but do not feel interest enough in the subject to hunt up ballots—and yet every such vote as this, though neither for nor against the subject, is to be counted “against it.” Look, sir, at the election of last spring when the subject of free suffrage was submitted to the people as a separate question. Why, sir, important as it was, not one-half the people of the whole territory voted on it at all; and such was the case when the question of license to sell spirituous liquors was presented in the same manner—yet every man who voted on any other subject at this election and did not vote on this is to be counted “against it.” Why will not men stand up to this subject fairly and if they are opposed to banking say so, honestly, openly, candidly, and insert into the constitution a prohibitory provision? Why play thus with the people as with children? Sir, they’ll be understood and remembered.

The question was then put upon the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 46, negative 15; for the vote see Appendix I, roll call 105].

The question was then put upon the article as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 46, negative 15; for the vote see Appendix I, roll call 106].

The question was then put upon concurring in the amendment of the committee of the whole, and was decided in the negative. The question was then put upon ordering the article to be engrossed and read a third time, and was decided in the affirmative.

On motion of Mr. Folts the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Mr. Whiton, from the select committee to whom the subject had been referred, made the following report, to wit:

"The committee appointed to investigate the claim of William S. Hamilton to the seat in the convention occupied by the Hon. John O'Connor, as a delegate from the county of Lafayette, have attended to the duty assigned to them and beg leave to report that it appears from an abstract of the votes given in the county of Lafayette for delegates to this body, at the election held on the twenty-ninth day of November last, that Charles Dunn received 561 votes, [John O'Connor] 436 votes, Allen Warden 461 votes, William S. Hamilton 434 votes, John W. Blackstone 422 votes, and William McGannegal 317 votes, the number of delegates to which the said county of Lafayette was entitled being three. It hence appears that the first three persons named were duly elected unless something can be shown to vary the result, as manifested by the official canvass of the votes.

"William S. Hamilton, the contestant, contests the claim of the Hon. John O'Connor to the seat now occupied in this body by him on the ground that illegal votes were cast for the said John O'Connor [sufficient to overbalance the majority which according to the canvass as above stated the said John O'Connor] obtained over him; and second, because the poll held at Shullsburg in said county of Lafayette was illegal for the reason that it does not appear that the judges of election were sworn as the law prescribes, and that the place where the votes were taken was not such a place as the law requires. Immediately after their appointment the committee appointed two commissioners to take testimony relative to the facts alleged by the contestant as the ground of his claim, as they were authorized to do by a resolution passed by this honorable body. The said commissioners have executed the powers conferred upon them by the commission and have taken testimony on the part of the contestant and the sitting member, which was returned to the president of this body and has been laid before your committee.

"From the testimony thus taken and returned the said contestant claims that the following points are proven:

"First. That one Timothy Norton voted at Wiota precinct in said county for the sitting member and not for the contestant and that the said Norton was not a legal voter in said precinct.

"Second. That William Wilkinson and Abraham Pilling voted for the sitting member and not for the contestant at the Willow Springs precinct in said county and were not either of them legal voters in said precinct.

"Third. That Barney Michaelbane and Thomas Langton voted for the sitting member and not for the contestant at the precinct of Shullsburg in said county and were not either of them legal voters in said precinct.

"Fourth. That Charles Goade and William Bray voted for the sitting member and not for the contestant at the Elk Grove precinct in said county and were not either of them legal voters at said precinct.

"That the judges of election were not sworn in at the election held in [the precinct of] Shullsburg and that the election held in said precinct was not held at such a place as the law requires.

"The sitting member claims that the said testimony proves that Mathew Harris and James Wheeler, or Phelan, both voted for the contestant and not for the sitting member at the Shullsburg precinct in said county and that neither of them were legal voters in said precinct. The committee without expressing any opinion in regard to particular instances of illegal voting are unanimously of the opinion that the contestant has not made out such a case as entitles him to the seat in the convention now occupied by the Hon. John O'Connor, and a majority of the committee are of the opinion that the Hon. John O'Connor is entitled to the seat now occupied by him. A minority of the committee think it doubtful whether upon a close scrutiny of the votes such would be the case; they are not sure but that the said contestant and the sitting member each received an equal number of legal votes.

"The committee do not think that the alleged violations of law in holding the election in the precinct of Shullsburg ought to affect the question submitted to the committee, for the reason that it is not claimed but that the election was fairly conducted, and that no fraud was attempted or committed. The committee recommend to the convention the acceptance of the accompanying resolution.

E. V. WHITON, Chairman

"*Resolved*, That William S. Hamilton is not entitled to the seat in this convention now occupied by the Hon. John O'Connor."

Mr. Whiton moved that the consideration of said resolution be postponed until tomorrow and made the special order of the day for that day, which was agreed to.

Mr. Prentiss said that in looking over the act of Congress of 1846 in relation to admitting Wisconsin into the Union, as published by authority at Washington, he had discovered that it did not read the same as what purported to be a copy of it, which was appended to the old constitution. The act as appended to the constitution provided that Wisconsin might be admitted into the Union on condition that she should accept the boundaries prescribed therein. The authentic act, he found, did not prescribe any such terms; it did not

require our assent to any boundaries as a condition of our admission. He thought the article we had passed, therefore, accepting the boundaries mentioned in the act, was not necessary. He merely wished to call the attention of the convention to the fact.

The convention then resolved itself into committee of the whole for the consideration of No. 18, article on apportionment of representatives, Mr. Wheeler in the chair.

The bill was read.

Mr. Chase inquired how it was that the counties of Crawford, Chippewa, St. Croix, and La Pointe were allowed only one senator and but one representative. If they were entitled to one senator they were entitled to more than one representative.

Mr. Lovell explained that the apportionment had been made on the principle of compensation. There was great difficulty in making a satisfactory apportionment, and there was no other way in which it could be done. It had been the object of the committee to leave each district represented in both houses; and where a district had not enough population to entitle it to a senator, it was allowed a senator; and to compensate, its representation in the house of representatives was decreased proportionally. Such was the fact in this case, and such was the principle throughout. Where a district had less than its proper representation in the house it had more in the senate and vice versa. In both together it had as nearly as possible what its population entitled it to.

The committee then rose and by their chairman reported the same back to the convention without amendment.

Mr. Rountree said he hoped no action would be taken upon the question at the present time. The census of Grant County as taken last fall was grossly incorrect. The person who had been appointed to take it had acknowledged this and had in consequence given up all claim for compensation for his services in taking it. The board of county commissioners had taken the matter in hand and made arrangements to have it taken over again. The result would probably be here next week. As an instance of the incorrectness of the census first taken, he mentioned that it had been taken over again in the town of Lancaster and showed the number of inhabitants to be one-third greater than by the first. He had no doubt that there were at least three or four thousand more people in the county than

were at first reported. He supposed there was no wish to do Grant injustice, and he hoped, therefore, the article would be laid on the table till the returns of the census now being taken were received.

Mr. King remarked that allowance had been made for the supposed inaccuracy of the census of Grant in the article. They would have been entitled to but three representatives by the ratio adopted; but on a suggestion of the inaccuracy the committee had allowed them four, which was probably as many as the true returns would entitle them to. Mr. Rountree thought not. He thought the correct returns would show that Grant had as large a population as Rock, and Walworth, and other counties, which were allowed five. At all events, he preferred to wait till the returns were received, and he would be satisfied with the representation they would give, be it more or less.

The committee then rose and by their chairman reported the same back to the convention without amendment, when Mr. Rountree moved that the article be laid upon the table, which was agreed to. And a division having been called for, there were 26 in the affirmative and 13 in the negative.

The convention then resolved itself into committee of the whole for the consideration of No. 17, article on education and school funds, Mr. Richardson in the chair.

Mr. Sanders moved to strike out section 9. He remarked that he did this to ascertain if there was any disposition on the part of members to provide for selling the school lands. So far as he had heard any expression on this point among the people at large, it was decidedly opposed to the sale of them. Illinois had sold hers and squandered the proceeds. So it would be with us, if we sold ours. Mr. Kilbourn suggested that the gentleman might obtain his end better by moving to strike out the word "shall" and insert the word "may"; and then it would be left to the discretion of the legislature to sell them when they deemed it expedient. Mr. Sanders liked the suggestion well enough, but instead of leaving it to the discretion of the legislature, as prescribed in this article, he would by all means have it prohibited in the constitution. But to ascertain if the convention could or would in any event favor the sale of the lands, he would adhere to his motion.

Mr. Whiton spoke.

Mr. Kilbourn moved to amend by striking out "shall" in the fourth line, and inserting "may." Then the commissioners would

have power in their discretion to sell them according to law or to withhold them from sale. But it would rest within the legislature to make the law and regulate its term or not to authorize the sale at all. Mr. Root inquired whether the legislature would have power to lease or rent the lands. Mr. Kilbourn said a provision might be added, if desirable, that they should not have that power. Mr. Sanders said that would force the lands into market, and he thought it would be highly inexpedient to do so. The school lands in Racine were probably worth half a million and were rapidly increasing in value. There were doubtless many who wished to have them sold, for their own interests, but he did not think it was for the interest of the school fund that they should be. The improvements made on these lands were a sufficient answer to the argument that lands would not be improved of which the state was landlord.

Mr. Kilbourn thought the provision ought not be inserted in the constitution. It should be left to the discretion of the legislature and would be safe there. Mr. Lovell said he thought the method of selling the land and of taking the securities should be left to be provided for by the legislature. The amendments of the gentleman from Milwaukee would destroy the force of the section and make it inconsistent with itself. It provided that the legislature might sell the lands and then gave the commissioners the power to reserve them from sale. They might disagree and come in collision. He thought it would be safe to leave the whole matter in the hands of the legislature, providing only that they should not apply the money received for the school lands for any other than school purposes. Mr. Kilbourn thought that whatever plan was adopted, it was proper to put it in the constitution. It was true it was going somewhat into detail, but the same was done in other cases and was proper. The same was done in the old constitution and gave great satisfaction. He thought if his amendment prevailed it would leave the matter as it should be.

Mr. Chase said he would vote for the amendment of the gentleman from Milwaukee, but he would also vote for the amendment of the gentleman from Racine—though not for his reasons. He was opposed to making the officers proposed a board of commissioners ex officio. They would be selected on account of other qualities than their fitness for this duty, and they would regard it as merely incidental and of secondary importance. But he would prefer to have the whole matter, both the organization of the board and the sale

of the lands, in the hands of the legislature. It would be a long time before the lands would be sold, or the system of education perfected, and a legislature assembled ten years hence will understand the wants of the people better than we can in advance. Mr. Sanders said gentlemen had misapprehended him. Rather than leave the article as first reported, he would have the sale of the lands prohibited in the constitution. But the way he would prefer would be to have the whole matter left to the legislature. He was opposed wholly to going into detail in relation to it in the constitution; but if we should, he hoped the power would not be given to the commissioners to sell the lands upon credit. Mr. Whiton spoke. The question was taken and the motion prevailed. The question then being on the motion to strike out the whole section, Mr. Whiton made some remarks.

Mr. Jackson said he had been struck with the remark of his colleague (Mr. Sanders) that the lands should not be sold on credit. He wondered what the gentleman would do with the money derived from the sale of the lands. The money could not be lent, for that would be credit, but must be expended as fast as raised, if the gentleman's idea prevailed. He hoped the motion would not prevail.

Mr. Lovell moved to strike out all after the word "appraised" in the fifth line to "paid" in the tenth line. He thought it belonged to the legislature to prescribe the manner of selling the lands, the securities to be taken, etc. He would say one word in reply to the remark of the gentleman from Rock about the commissioners. The secretary of state and auditor, which offices we had provided should be incorporated in one person, were intended as a check upon the treasurer. Now it was proposed to put these two officers together on the board and give them a common interest in the management of the school fund, instead of making them checks upon each other. This was a solecism. He thought there was no propriety in putting those officers on the board. They were not the persons who were most likely to attend to the duties properly. The superintendent would be a more proper person. But he hoped all this detail would be left out of the constitution. Mr. Sanders said that the article provided that the secretary, treasurer, and attorney-general should be a board for the sale of the lands, and were charged with the duty of appraising them. The legislature could sell the lands only on the terms fixed by the board. As to what had been

said about favoritism, there could certainly be as much if the lands were sold on credit, as if for ready pay. A might offer the money, and still the board might sell to B on long credit, if they chose. Mr. Chase hoped the amendment would prevail, if the other did not; but he hoped both would.

Mr. Root said the reason why the committee had constituted the board as they had was this: If no agents had been specified in the constitution, it would have been left to the legislature to select them. This had been done in one state, and the result was that the state had been defrauded out of one-half of the value of the lands. The men who wished to buy the lands and knew their value got a law through the legislature providing for their sale by commissioners, and then got themselves appointed commissioners, and got the lands on their own terms. So it would be with us, if we left the matter to the legislature. The committee had sought to guard the fund by putting the charge of it in high and responsible hands. And he thought there was also a propriety in the officers chosen. The keeping of the funds would very properly pertain to the treasurer, and the title to the lands and all other legal questions concerning them, to the attorney-general. Another consideration in favor of this mode was that it would cause no additional expense to the state. The salaries of the officers were already established, and this was only imposing additional duties upon them. If a separate board were constituted, it would be necessary to pay them, and it would be good economy to pay them roundly. He thought there was no good reason for striking out the section. It was our duty to specify who should have the care of this great interest.

The amendment was lost.

Mr. Chase offered an amendment to the ninth section, substituting the lieutenant governor and superintendent of schools in place of the secretary of state and treasurer. Mr. Whiton spoke in opposition to it. Mr. Estabrook thought it would not be proper to place the superintendent of schools on the board. The qualities required in that officer were of a very peculiar kind—so much so that different states had selected men to fill it from out of the state, looking only to their peculiar fitness. That question had been fully considered in the committee. All writers had agreed that that office should have nothing to do with the machinery of the school system or the management of the funds. He might be a

most improper person for that duty. His province was to put the system in operation. Mr. Chase said if the organization of the board were to be provided for in the constitution, he would prefer the substitute proposed. The lieutenant governor would have little else to do, and both he and the superintendent would be chosen more especially with reference to their fitness for that duty. The vote was taken on the amendment and it was lost.

Mr. Kilbourn offered an amendment to section 9, providing that the members of the board should give security for the faithful discharge of their duties, which was adopted.

Mr. Chase, to take the sense of the convention, moved to strike out the clause fixing the rate of interest at seven per cent. Mr. Kilbourn opposed it. He thought the rate of interest should be stated specifically and should be the same to all. If seven per cent was paid now, it would be unequal and unjust to allow a less rate to those who should take them hereafter. The price of the lands depended very much on the rate of interest, and this was an additional reason for having it fixed and uniform. Mr. Lovell argued from the gentleman's own ground that the rate of interest should be less than seven per cent. It was very true, as he had said, that the price of the lands would, as it were, be fixed by the rate of interest. The more the interest required, the less people would give for the lands, and vice versa. Now the lands were not to be on interest forever. If we fix the rate of interest at five per cent, when the principal comes to be paid, ten, fifteen, or twenty years hence, it would be greater, and we should then need it more. Five per cent would be sufficient for our present need. The interest should be so varied as to yield an annual revenue sufficient, and neither more nor less, for the annual expenditures required. The gentleman's argument showed that the rate should not be fixed in the constitution at all. Mr. Whiton spoke. Mr. Chase thought the rate of interest should not be fixed in the constitution, and if it were, it should not be fixed as high as seven per cent. If the lands were farming lands, the buyer could not afford to pay so much, for the good reason that he could not make so much from the tillage of the land. Mr. Jackson was surprised to hear the gentleman say that, when it was well known that lands were bought every day with money borrowed at twenty-five and thirty per cent interest, and that the buyers made money at that.

Mr. Lovell said gentlemen appeared to have lost sight of the true case of the school fund. It was not our policy to raise the most we could from it now, but only as much as was required for present use, and then to provide for the remainder—so that it should be safe and increasing. We were getting along pretty well now with schools. If an additional sum to the amount of fifty cents a scholar per annum were raised, he thought the supply would be ample to enable every district to maintain a school for the term required by the article. What did the committee report? They said the value of the school lands in the settled portion of the territory was \$760,000. It was in reality much higher, as the fact that they had estimated the school section in Racine at \$3.00 per acre, when it is actually worth \$500,000 in all, sufficiently showed. Let one-third of this be offered for sale, and in three years enough would be sold to amount to \$750,000. The interest on this would be immediately available, and at seven per cent it would be far more than we needed. If we desired to make the school fund the most available to the cause of education, now and hereafter, we should lower the rate of interest. If we desired to make it produce the least possible sum in future time, we should establish a high rate. How long would it be before the people who buy the school lands would pay for them? Perhaps five, ten, or twenty years. It was probable that they would be taken rapidly—perhaps the greater portion of them within ten years. We should raise then a large amount of money which we should not need at present and sacrifice the interests of posterity when there is no necessity for it. The better way would be to leave it to the legislature to regulate the interest from year to year, according to the yearly wants of the state.

Mr. Jackson remarked that his colleague had said that an additional sum of fifty cents a scholar would be sufficient for the present necessities of education. Was it possible he thought that could do the whole? It was well known that children could not be kept at school for less than three or four dollars a year; and besides, normal schools and academies were to be established, teachers to be educated, superintendents to be supported, etc. The fifty cents would be nothing towards the accomplishment of all this. As to the interest, he would think his colleague desired to have it reduced to a mere nominal sum. On the contrary, he thought we should get all we could. We needed it. But he suspected this movement was an entering wedge to prepare the way for a grand scheme of internal

improvements, which would dig down all our hills and fill up our valleys, and he hoped it would not prevail.

The question on Mr. Chase's motion was not taken.

Mr. Whiton offered an amendment to the first section, providing that the state superintendent should be elected by the people, and made some remarks in favor of it. Mr. Chase said he wished the gentleman would so modify his amendment as to provide for choosing the superintendent "in such manner as might be prescribed by law." He was in favor of the principle of electing officers in general, but in this case he thought that, at least for some years, it might be better to leave it to the legislature, for the reason that it might be expedient to procure some gentleman from abroad to fill that office. The qualities required in a superintendent were very peculiar, and we might not at this time have just the right kind of man among us. Mr. Whiton declined doing so.

Mr. Kilbourn said he would go against the amendment for many reasons, and among them that mentioned by the gentleman from Fond du Lac. He did not regard the office of superintendent as of the same nature as political offices in general. It was a mere employment, for a specific purpose, unconnected with anything local—as that of a schoolmaster or a professor. Would the gentleman from Rock have our colleges restricted to the state in the choice of professors? He thought we should retain the power to do as our interests seemed to require—not tie up our hands. Another reason was that we might not get the best man the first time, and we should have a power to rectify mistakes. For his part he did not believe the term of the superintendent should be fixed by periods at all. He should be removed whenever the interests of the public required it, and retained as long as they required it. Now it was a general principle, in practice at least, that the power that appoints has the right to remove. If the superintendent were elected by the people, they only could remove him, and the consequence would be that, good or bad, he would serve out a full term. If the governor and senate have the appointing and removing power, we have every guarantee that they will be gentlemen capable of judging and acting with discretion, and if they should make a mistake they can rectify it as soon as discovered.

Mr. Root said he would give some of the reasons which had influenced the committee in fixing upon the plan they had recommended. They had fixed upon no salary. The gentleman from Rock had

fixed upon \$1,200 in his amendment. Now he had no objection to this sum if it was sufficient and not too large. But how could they determine this till the duties of the superintendent were determined? The superintendent might be required to spend the greater part of his time in traveling, and if so, the amount would probably be too low. The committee from this, among other considerations, had left it to the legislature to fix the salary when they prescribed the duties. In regard to the appointment by the governor, they had thought, as had been said, that it might be expedient to choose the power from some other state. This could not be done if he were elected by the people. The appointment would have to be done by some agency or delegated power—and if so, what more proper one than the governor and senate, who were the immediate agents of the people? If it were done by election—nominally by the people themselves—it would work thus: Each political party would assemble in its town meeting and choose delegates to a county convention; the county convention would choose delegates to a state convention; and the state convention would nominate the superintendent. Thus he would really be appointed by a large and irresponsible body, three removes from the people, instead of being appointed by their immediate and responsible agents. It was moreover an object to keep the appointment wholly out of the influences of party politics. These were the considerations which had influenced the committee, and he thought the way they had recommended the best that had been proposed.

Mr. Whiton spoke.

Mr. Harvey said he thought the plan recommended by the committee the best. Of late years, both in Europe and in this country, the subject of common school education had received great attention, and information on the subject was anxiously sought for. Many men of the best minds had made the subject their particular study. Many books had been written upon it, and journals established for the purpose of collecting and disseminating the facts in relation to the workings of different systems and the comments of those interested. In this way the study and practice of public instruction had come to assume somewhat the rank of a profession. We wanted a professor of that kind for superintendent—one who knows what has been done in other states and countries—what has worked well and what ill—and who has practical good sense enough to select and put in operation what has been found by experience

to be the best. It was quite likely we might have no such man among us at this time. Then he thought the governor should have power to go abroad and find one wherever he was to be found. He agreed with the gentleman from Milwaukee that the selection of this officer was of the same nature as the selection of a professor in a college. An acquaintance with the particular subject of public instruction, with the peculiar qualities requisite for putting a system in operation with life and energy, was what was wanted. Party politics and place of birth were matters of no consequence. This was the view taken of the matter in other places, and as an instance he mentioned that Dr. Baird, of Pennsylvania, after he had returned from his travels in Europe, whither he had gone to investigate its school systems, was invited by the state of Mississippi to accept the office of superintendent and organize a new system of schools which they were just putting in operation, and was offered \$5,000 a year salary. This was real prudence, and it was not probable that the amount could have been expended so advantageously for the cause of education in any other way. So it might be with us, and he thought the provision recommended by the committee on this point was precisely as it should be.

Mr. Jackson moved an amendment, the effect of which was to strike out all relating to the manner of appointment, etc., and to provide that the salary should not exceed a certain sum. Mr. Kilbourn said that to limit the salary of the superintendent was just as objectionable as any other detail on the subject. He thought the whole matter should be left in the hands of the legislature. They would act prudently both in regard to the selection of the person and in regard to his salary. The duties of a superintendent were not of a fixed and well-known kind, like those of political officers. Public instruction was yet in its infancy, though there had been experimenting upon it for the last fifty years. No gentleman could suppose that the services of an eminent scholar or professor of this art could be secured for \$1,200 per year. It might be necessary and expedient to pay more. He thought all these questions should be left to the governor and senate, and public opinion would control them in their action upon this as upon all other subjects.

Mr. Whiton spoke.

Mr. O. Cole said he had a much better opinion of the talent of Wisconsin than to suppose it would be necessary to go abroad to find a person fit for the office of superintendent of common schools.

That officer should be a man well acquainted with the business of instruction, but the highest order of talent was not requisite. The case was not that of a professor in a college. A professor had to teach languages, or mathematics, or some other of the sciences, without any regard to circumstances. A superintendent, on the contrary, should have the most particular knowledge of the character, wants, and capacities of the people among whom he was to labor. He should, moreover, feel some state pride and patriotism—feel that he is not a mere hired laborer to illustrate theories, but that he is charged with an important duty in which his children, his friends, and all he holds dear are deeply interested in common. He thought a stranger could not do this as well as a citizen. Moreover, persons taken from abroad would be more apt to have different systems, different books, etc., and each one would seek to carry out his peculiar theories, and thus create confusion. Pedagogues were notorious for foibles of this kind. He thought on these and other accounts it would be best to confine the selection to the state. He thought, moreover, that the people could choose this officer as well as any other, and that they would take a peculiar interest and pride in it.

Mr. Kilbourn said the gentlemen from Grant and Rock spoke as if by the provision we were required to go abroad to select a superintendent. It was not so at all, and the preference would undoubtedly always be given to our own citizens. It was merely allowing a discretion which might be necessary, and he thought it would be in wise and discreet hands.

Mr. Jackson withdrew his amendment.

The vote was then taken on Mr. Whiton's amendment, and it was adopted 29 to 19.

Mr. Kilbourn said in his opinion this article had been drawn up with much care and ability, and he did not think the amendment just adopted had improved it. But he had discovered one error, or at least an ambiguity, and he would offer an amendment to meet it. In the sixth section, each town and city was required to raise annually, for the support of primary schools, a sum not less in amount than one-half that received by such town or city from the income of the school fund. This might be taken to include all they should receive for academies, normal schools, etc. He presumed it was the intention of the committee to limit it to that raised for primary schools, and he moved, therefore, to insert the words "for that purpose" in the third line after the word "respectively." Mr.

Root said such was the intention of the committee. The amendment was adopted.

Mr. Martin offered an amendment to the third section, which was adopted.

The committee then rose and by their chairman reported the article back to the convention with sundry amendments. And the question being on concurring in the amendments of the committee, Mr. Lovell moved that the convention adjourn. The question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 42, negative 14; for the vote see Appendix I, roll call 107].

So the convention adjourned.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 1, article on banks and banking.

Mr. Vanderpool introduced the following resolution, which was read, to wit: "Resolved, That the use of this hall be tendered to the Rev. Mr. Lancaster on next Sabbath for the purpose of divine service."

Resolution No. 2, introduced by Mr. Lovell yesterday, was taken up.

Mr. Judd spoke in opposition to the resolution. Mr. Lovell said that he had supposed that this rule had already shown its imperfections on several occasions since its adoption. No such rule had ever been adopted in any other legislative body under heaven. The forty-first rule of the United States House of Representatives required that the motion to insert and strike out should be indivisible. Mr. Lovell showed several instances in which the rule as it stood must lead to an absurdity.

The question was then put upon the adoption of the same, and was decided in the affirmative.

Resolution No. 1, introduced by Mr. Doran yesterday, was taken up, when Mr. Doran moved to lay the same upon the table, which was agreed to.

The President presented a communication from the Secretary of the territory, containing an abstract of the returns of the census of Winnemago County.*

No. 4, article on banks and banking, was then taken up and read a third time, when Mr. Jackson moved to recommit the article with the following instructions, to wit: "Amend the fifth [second?] section by inserting between the words 'election shall' the words 'on that subject'; also add in the section the words 'on that subject.'"

*See census returns on page 355.

Root said such was the intention of the committee. The amendment was adopted.

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The committee then rose and by their chairman reported the article back to the convention with sundry amendments. And the question being on concurring in the amendments of the committee, Mr. Lovell moved that the convention adjourn. The question having been put, it was decided in the affirmative. And the eyes and noses having been called for and ordered, those who voted in the affirmative were [affirmative 44; negative 14; for the vote see Appendix I roll call 107].

So the convention adjourned.

FRIDAY, JANUARY 14, 1848

Prayer by the Rev. Mr. Read.

The journal of yesterday was read.

Resolution No. 5, introduced by Mr. Whiton yesterday, was taken up, when Mr. Whiton moved that the consideration of the same be postponed until Monday and made the special order of the day for that day, which was agreed to.

Mr. Reed presented a petition from sundry inhabitants of Winnebago County on the subject of the "Fox River Grant," and moved that the same be referred to a select committee of three, which was agreed to. The President announced the appointment of the following named persons as said committee, to wit: Messrs. Reed, Fox, and Fenton.

Mr. Beall presented a petition from sundry inhabitants of Fond du Lac County, praying that the name of this territory be changed to that of "Columbus," and moved that the same be referred to the committee on miscellaneous provisions, which was agreed to.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 4, article on banks and banking.

Mr. Vanderpoel introduced the following resolution, which was read, to wit: "*Resolved*, That the use of this hall be tendered to the Rev. Mr. Lancaster on next Sabbath for the purpose of divine service."

Resolution No. 2, introduced by Mr. Lovell yesterday, was taken up.

Mr. Judd spoke in opposition to the resolution. Mr. Lovell said that he had supposed that this rule had already shown its imperfections on several occasions since its adoption. No such rule had ever been adopted in any other legislative body under heaven. The forty-first rule of the United States House of Representatives required that the motion to insert and strike out should be indivisible. Mr. Lovell showed several instances in which the rule as it stood must lead to an absurdity.

The question was then put upon the adoption of the same, and was decided in the affirmative.

Resolution No. 1, introduced by Mr. Doran yesterday, was taken up, when Mr. Doran moved to lay the same upon the table, which was agreed to.

The President presented a communication from the Secretary of the territory, containing an abstract of the returns of the census of Winnebago County.*

No. 4, article on banks and banking, was then taken up and read a third time, when Mr. Jackson moved to recommit the article with the following instructions, to wit: "Amend the fifth [second?] section by inserting between the words 'election shall' the words 'on that subject'; also add to the section the words 'on that subject.'"

*See census returns on page 355.

Mr. Jackson said that the article as it stood required for the passage of a banking law a majority of all the votes cast at the election. The object of the amendment was to require a majority of the votes cast on that subject only. Mr. Chase said that he had hoped that the vexed subject of the bank question was settled. He trusted that it would not be recommitted, least of all with instructions to make such an amendment, the result of which would be that if only ten men voted on the subject, six of them would inflict banks on the people.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 28; for the vote see Appendix I, roll call 108].

No. 17, article on education and school funds, was then taken up. And the question being on concurring in the amendments of the committee of the whole, Mr. Jackson called for a division of the question, the question being upon concurring in the first amendment of the committee, which was to strike out the last paragraph of the first section and insert as follows, to wit: "The state superintendent shall be chosen by the qualified electors of the state in such manner as the legislature shall provide. His powers, duties, and compensation shall be prescribed by law: *Provided*, That this compensation shall not exceed the sum of \$1,200 annually."

Mr. Lovell moved to amend the amendment by striking out "1,200" and inserting "1,500." And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28, negative 33; for the vote see Appendix I, roll call 109].

Mr. Kennedy moved to amend the amendment by striking out the proviso.

Mr. Estabrook, in answer to Mr. Whiton's remarks in which that gentleman had adverted to the fact of the salaries of judges being fixed and not subject to increase, whatever might be the amount of their labors, said that there was a very material difference between the case of a judge in this particular and a superintendent of schools. The business of a judge was specifically defined, and every member of the legislature was competent to determine what his services were worth. Such was not the case with reference to the superintendent. His duties would be very arduous—more so probably at first than they would be at any subsequent period. He would have to visit all the different counties in the territory—examine and decide in reference to the schoolbooks to be used. It was impossible to know exactly what duties might devolve upon

this officer; consequently it had been deemed by the committee inadvisable to fix any specific sum for his compensation.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 25, negative 37; for the vote see Appendix I, roll call 110].

The question was then put upon concurring in the amendment, when Mr. Jackson addressed the convention in opposition. It appeared to him to be essential that the office of superintendent should not be in any manner connected with party politics. If the appointment of this officer were left with the governor and senate, as the original article provided, he believed that it would be made without reference to politics, and that regard would be had only to the qualifications for the office. If the choice of the superintendent should be left to a popular election, he must necessarily be elected by party votes. Another objection which he entertained to the amendment was that it fixed the maximum of salary. This was a very important office, perhaps the most so of any in the state. They wanted a man to fill it who would be thorough in business, and well acquainted with the duties which he would be called upon to perform. The services of such a man could not be obtained for a small sum. Gentlemen were getting too democratic in their notions.

Mr. Lakin was in favor of the principal features of the amendment. He was decidedly in favor of limiting the selection of the officer to Wisconsin. There was as great a variety of talent here as anywhere. If we were not able to find a proper officer here, we had better do without the office. He was decidedly opposed to importing a man to fill this office, fresh from the colleges of the East, set in his notions, and believing everyone wrong who had been educated on a different system. The office required a man of some sense; it did not require a linguist or a mathematician. We should stand a better chance of getting a good officer if he was elected from among the Badgers. It had been urged against the election of this officer by the people that they might make a mistake and elect someone who was not properly qualified. Did not this objection apply with equal force to the election of other officers? The election was not for life; and it would be safer to trust it to the honest electors than to a logrolling legislature, for the most part composed of partisans. He was decidedly in favor of having the people rule and believed in the principle of keeping the elements of government as

near to them as possible.

Mr. Doran concurred entirely in the views of Mr. Lakin and regretted only that he had not dwelt on the necessity of a higher salary. The superintendent could not go through the state and discharge his duties on a salary of \$1,200. If he possessed powers of ubiquity, there would not be more than he would require for the discharge of his duties. The facilities for traveling in the territory were, as yet, and for some time would be, very insufficient. It would be necessary for the superintendent to provide himself with horses and a conveyance, all of which would involve expense. Persons might be found who would undertake to perform the duties of the office for the salary provided, but they could not perform them properly.

Mr. Whiton here expressed his views.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 42, negative 18; for the vote see Appendix I, roll call 111].

The second, third, and fourth amendments of the committee, which were: "Second. Strike out in section 3 all to the word 'fund' inclusive, and insert 'the interest of which and all other revenues derived from the school lands.'"

"Third. Amend section 6 by inserting after the word 'respectively' in section 3 the words 'for that purpose.'"

"Fourth. Add to section 9 'and said officers shall give such security for the faithful performance of their duties as may be required by the legislature'" were then concurred in.

Mr. McClellan moved to amend the article by striking out in section 3 the words "county academy and."

Mr. Root said that it was not the intention of the committee to appropriate the school fund to county academies, as such. The phraseology of the section conveyed a different idea from what the committee intended.

Mr. McClellan said that his objection to the idea of appropriating a portion of the residue to the support of academies was that their benefits were confined to a small portion of the community. Normal schools are to the common schools what the fountain is to the stream. It is to them that we must look for the means of supplying the common schools with competent teachers. Mr. Estabrook said he was a little tenacious about this matter and wished to have the words retained. As a sufficient provision was made for the support of common schools in the first place, he could not see

what objection could be made to giving a portion of the residue for the support of academies. We have an appropriation of seventy-two sections of land for university purposes. We should thus have the two extremes provided for without any provision for the intermediate institutions. How could a system be carried on in this manner? How could the student, after he had passed through the common schools, prepare himself for the university? Scholars would have to be sent to the East for the intermediate portion of their education. Mr. King objected to the amendment on the same grounds as Mr. Estabrook. As regarded the objection made by the advocates of the amendment to academies, that they were not open to the masses, he would propose that for the money which should be received by the academies an equivalent should be rendered by them. Free scholarships might be established in proportion to the amount received, and the most prominent scholars from the preparatory schools might be selected to fill them. The same system might be adopted in the colleges. He hoped to see the time when the fund would be sufficiently large to afford free instruction in all the institutions of the state, from the primary schools to the universities.

Mr. Rountree was opposed to the amendment, though he did not consider a provision for the support of the higher institutions so important as for the common schools. It was necessary to make ample provision for the support of common schools in the first place; then, if there should be a surplus over and above, it could be applied to the support of academies. He had no objection to that, under the circumstances; but he had a great objection to applying the public money to the support of normal schools, if there was any other use for it. Normal schools were intended for the education of teachers; but it was not always found that those educated in them became teachers. They very often employed themselves in other occupations. He did not think that the state ought to provide for the education of a privileged class, but if any distinction was made it should be in favor of common schools.

Mr. Whiton rose merely to ask a question of the mover of the amendment. Suppose, that after providing for the support of the common schools and the normal schools, there should be a surplus—how should it be disposed of?

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the

what objection could be made to giving a portion of the residue for the support of academies. We have an appropriation of seventy-two sections of land for university purposes. We should then have the two extremes provided for without any provision for the intermediate institutions. How could a system be carried on in this manner? How could the student after he had passed through the common schools, prepare himself for the university? Scholars would have to be sent to the East for the intermediate portion of their education. Mr. King objected to the amendment on the same grounds as Mr. Eastbrook. As regarded the objection made by the advocates of the amendment to academies, that they were not open to the masses, he would propose that for the money which should be received by the academies an equivalent should be rendered by them. Free scholarships might be established in proportion to the amount received, and the most prominent scholars from the preparatory schools might be selected to fill them. The same system might be adopted in the colleges. He hoped to see the time when the fund would be sufficiently large to afford free instruction in all the institutions of the state, from the primary schools to the universities.

Mr. Rountree was opposed to the amendment, though he did not consider a provision for the support of higher institutions so important as for the common schools. It was necessary to make ample provision for the support of common schools in the first place; then, if there should be a surplus over and above, it could be applied to the support of academies. He had no objection to that under the circumstances; but he had a great objection to applying the public money to the support of normal schools, if there was any other use for it. Normal schools were intended for the education of teachers; but it was not always found that those educated in them became teachers. They very often employed themselves in other occupations. He did not think that the state ought to provide for the education of a privileged class, but if any distinction was made it should be in favor of common schools.

Mr. Whiton rose merely to ask a question of the mover of the amendment. Suppose, that after providing for the support of the common schools and the normal schools, there should be a surplus—how should it be disposed of?

The question was then put and was decided in the negative. And the yeas and nays having been called for and ordered, those who voted in the

affirmative were [affirmative 27, negative 35; for the vote see Appendix I, roll call 112].

Mr. Sanders moved to amend the article by striking out section 6 and inserting in lieu thereof the following: "Provision shall be made by law requiring the several towns and cities to raise a tax on the taxable property therein annually, for the support of common schools in said towns and cities respectively."

Mr. Sanders said the article which he proposed to amend required each town or city to raise annually, for the support of the primary schools therein, a sum not less than one-half of that received from the income of the school fund. By looking at the report of the committee we find the school sections amounting to 1,472,000 acres of land. Of this, there were 250,000 acres in the surveyed portion of the territory, estimated to be worth \$750,000, which was to be considered as immediately available. With this great fund increasing in value every year, he thought it unjust to make it necessary for the legislature to levy an additional tax equivalent to one-half the interest. He would leave the matter to the discretion of the legislature. It might not be necessary to levy a tax amounting to more than one-fourth or one-eighth of the income of the fund. It was the policy of the state to make the burden as light to the poor as possible and to carry education home to every child within its limits. Suppose the case of a poor town which could not raise, in addition to its other taxes, a sum equal to one-half of its proportion of the interest of the school fund. All the benefits of the fund would be taken from it—it would not receive one cent from the fund.

Mr. Estabrook said that the committee had not reported the provision proposed to be struck out through any carelessness or inadvertency. It was the result of thought and deliberation. It was intended that, whatever the amount of the school fund might be, one-third of the expense of supporting schools should be borne by each town. If a sufficient sum was not contributed by the school fund, the towns should have power to raise more. This provision was directly for the advantage of the poor. The gentleman who had last spoken might not appreciate this, but a poor man with a family of children and no fancy lots to dispose of could understand the advantage. Experience had shown that if nothing was contributed by the town, the common schools languished, and select schools rose on their ruins. The school fund of Connecticut was

so large as to be sufficient to defray the expenses of the education of every child within the limits of the state. Yet there, until a year or two [ago], the district school system had declined. No adequate interest was felt by the people in common schools, unless they contributed to their support. To obviate this danger, the committee had inserted the section.

Mr. Lovell said that if he had any objection to the section at all, it was of a nature directly opposite to that entertained by the gentleman from Racine (Mr. Sanders). His only objection was that it did not require the towns to raise a share sufficiently large. By the provisions of that section, all that was required to enable a district to draw a share of the fund was to support a school for one month. Mr. Sanders remarked that his principal objection was that the section limited the legislature to a certain proportion beyond which it could not go. He wished the matter left discretionary with the legislature.

Mr. Judd made a few remarks in opposition to the amendment.

The question was then put upon the adoption of the same, and was decided in the negative.

Mr. Warden moved to amend section 4 by inserting before the word "children" the word "white."

Mr. King suggested that it would be as well to amend further by inserting the word "free" before "white." Mr. Estabrook proposed that while he was about it the gentleman from Lafayette (Mr. Warden) had better propose to amend by requiring that all the children should have blue eyes. Mr. Lakin did not consider the amendment of the gentleman from Lafayette to be necessary. The matter was one which public opinion would regulate. If in any particular district the people chose to admit colored children to the benefit of the schools, it was perfectly right they should have that privilege.

And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 3, negative 56; for the vote see Appendix I, roll call 113].

Mr. Ramsey moved to amend section 4 by striking out at the end of the section the words "and no sectarian instruction shall be allowed in said schools." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted

in the affirmative were [affirmative 2, negative 57; for the vote see Appendix I, roll call 114].

Mr. Folts moved to amend section 4 by striking out the words "children between the ages of four and sixteen years" and inserting "persons under the age of twenty-one years."

Mr. Kilbourn was opposed to the amendment because the law recognized all persons under twenty-one years of age to be children. It was hardly to be supposed that many over the age of sixteen would be sent to the primary school. Mr. Vanderpoel apprehended that if the amendment should be adopted, the duties of superintendent would be rather arduous. The minimum age being struck out, primary schools might be made nurseries for infants. Some system must be adopted defining some limitations of age. Mr. Judd was in favor of the amendment.

Mr. Scagel moved to amend the amendment by substituting the word "eighteen" instead of "twenty-one."

Mr. Estabrook said that in one sense we were all "children of a large growth." Unless some provision was made in respect to age, great embarrassment would ensue to the officers who would have the business of the schools in charge. It was not intended by the article to exclude children of whatever age from attending the schools. The money would be distributed, and those between the specified ages would have the advantage of it. The only difference would be that those above the age would not have the benefit of the public fund.

Mr. Judd requested Mr. Folts to modify his amendment so as to strike out the words "children between the ages of four and sixteen" and insert "all persons under twenty-one years of age."

Mr. Chase was in favor of Mr. Scagel's amendment. In some parts of the territory there was a large foreign population who were unacquainted with our language. That amendment would leave the schools free for them to obtain an English education. He could not agree to an amendment which would strike out all ages. It was an injurious system to send children under four years of age to school.

Mr. Doran preferred the amendment of Mr. Judd but was inclined to think that immorality might result from throwing together persons of both sexes of mature years in common schools. Mr. Kinne thought that if any weight was to be attached to the opinion expressed by Mr. Doran, they might as well throw aside the

article entirely. If there was an immoral tendency arising from the association of both sexes at those schools, it would exist in full as much force at an earlier age than that suggested. He preferred to fix only the minimum age. He thought that much greater improvement was made by children over sixteen years of age than under. One-third of the scholars at the common schools in the winter season were over that age. He deemed any feature bad which would exclude from a free participation in the advantage of common schools persons over twenty-one years of age. He held that they were as much entitled to the benefit of the system as those below the age of eighteen.

Mr. Gifford was in favor of Mr. Scagel's amendment.

Mr. Estabrook believed it to be the duty of the convention to provide for a general rule and not for an exception. Gentlemen seemed disposed to provide for the exception and not for the rule. The general rule required that they should provide for the instruction of persons between the ages of four and sixteen years. It was the glory of this country that there were very few who have not received a good common school education at the age of sixteen.

Mr. Scagel said that the object of his amendment was to provide against the circumstance that, owing to the newness of the country, many of the earlier settlers had been deprived for years of the benefit of schools. Meanwhile their children were growing up around them, and many of them were now of or near the age of sixteen. These youth had from the peculiar circumstances in which they were placed no advantages of education. It was to afford them these advantages that he proposed his amendment.

Mr. Jackson hoped that neither amendment would prevail. The object of the convention should be to provide education for the masses. Youth from sixteen to twenty-one were for the most part able to educate themselves. By crowding on the school scholars of a more advanced age, nearly all the time of the teachers would be taken up, and the younger scholars would be neglected.

The amendment was disagreed to.

Mr. Vanderpoel moved to amend the amendment by inserting after the word "persons" the words "over the age of four years," which was accepted by Mr. Folts as a modification of his motion. The question was then put upon the adoption of the amendment as modified, and was decided in the negative. And a division having been called for, there were 24 in the affirmative and 29 in the negative. Mr. Gifford moved to amend section 4 by striking

out the word "sixteen" and inserting the word "seventeen." Mr. Judd moved to amend the amendment by striking out "seventeen" and inserting "twenty."

Mr. Kilbourn said that though there might be some persons over the age of sixteen who had by their unfortunate position been denied the benefits of education, yet at that age they possessed within themselves the ability to provide for their own education. He considered it improper to tax the people for the education of men and women. If persons over that age had not sufficient ambition to defray the expenses of their own education, the people should not be taxed for them to be educated. Mr. Vanderpoel differed from Mr. Kilbourn in his views on this subject, particularly in reference to persons between the ages of sixteen and twenty-one. From the peculiar circumstances which attended the settlement of new countries, the early settlers had been in many cases almost entirely deprived of the benefit of schools. In the sparsely settled portions of the country, schools could not of course be established, and the first settlers were poor men who could not afford to send their children to a distance to be educated. In consequence of this many have grown up to the age of sixteen, and in some cases over that age, without ever having had any opportunity of attending any school. This was the case in some parts of his own county. It was right that they should enjoy the privileges extended to others, and this could be effected only by extending the maximum limit to twenty-one years.

Mr. Richardson said that the gentleman from Milwaukee, Mr. Kilbourn, had argued that if persons over the age of sixteen had not the ambition to educate themselves, the people ought not to be taxed for them to be educated. Was not the gentleman aware that children of poor parents over the age of sixteen and under twenty-one were under the control of their parents? That their parents could not dispense with their services? He was himself a living witness of the fact. At the age of sixteen he was apprenticed, and at twenty-one he was turned loose upon the world without an education. If in the days of his youth there had been a provision similar to that which it was now endeavored to engraft on the school article, it would have been stipulated in his indentures that he should have been sent to school for some portion of the time, because this would have cost his employer nothing except the loss of a portion of his time. In his own immediate neighborhood there was no school, and the people for the most part could not afford the expense of sending

their children abroad and paying their board. He was himself in this position. He had children over fourteen years of age, and who would perhaps be over sixteen before schools were established, and he did not wish to be debarred from the privilege of sending these children to school when the opportunity should be presented.

Mr. Schoeffler said he was opposed to any alteration in the article as it was reported. As regarded the idea which had been suggested that there were many foreigners over the age of sixteen who would desire to avail themselves of the privileges of common schools, so far as his experience was concerned it was not correct. Most of those with whom he was acquainted, who did not understand the English language, preferred to take private lessons. Others would have the advantage of Sunday-schools. He was also opposed, on the same grounds as had been presented by Mr. Doran, to throwing together in common schools men and women. Mr. Sanders made a few remarks in favor of the amendment. Mr. Judd expressed his views. Mr. Schœffler said that he could not see how persons over the age of sixteen were excluded from common schools as the article now stood. The regulation of age had reference only to the distribution of the school fund.

Mr. King made a few remarks in reply to Mr. Judd. Mr. Lovell was in favor of the amendment. Mr. Vanderpoel said there was one point which had thus far escaped gentlemen who had spoken on the subject. There was a feeling of pride which restrained those who were unable to pay their proportion from sending their children to the common schools. This feeling would operate with those persons over sixteen years of age who might need the advantage of these schools, and yet could not afford to pay any charge of tuition. If education was made free to them as well as to younger scholars, that feeling would not operate to deter them. Mr. Schœffler said that he was under the impression that the article as it stood did not exclude persons over sixteen years of age. Under that impression he would vote against the amendment. He wished to be corrected if he was wrong in his understanding of the matter. Mr. Root explained that there was no prohibition.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 32, negative 28; for the vote see Appendix I, roll call 115].

Mr. Jackson moved that the convention take a recess until half past two o'clock P.M., which was disagreed to.

The question was then put upon the adoption of the amendment as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 44, negative 16; for the vote see Appendix I, roll call 116].

On motion of Mr. O'Connor the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Mr. Chase, from the committee to whom had been referred No. 4, article on banks and banking, with instructions to amend the same, reported the article as amended, in accordance with the instructions, to wit: "Amend section 2 by inserting between the words 'election shall' the words 'on that subject'; also by adding to the section the words 'on that subject.'"

The question being on concurring in the report of the committee, Mr. Chase called for a division of the question.

Mr. Whiton moved a call of the convention, which was ordered, and Messrs. Fenton, Harvey, Hollenbeck, and Wheeler reported absent.

The sergeant at arms was sent for the absentees.

Mr. Sanders asked leave of absence for Mr. Hollenbeck. Leave was granted. Mr. Jackson moved that all further proceedings under the call be dispensed with, which was disagreed to.

The absentees having been reported in attendance, the question being upon the adoption of the first amendment,

Mr. Beall made some remarks.

Mr. Featherstonhaugh said he had voted against the proposition of the gentleman from Milwaukee (Mr. Larkin) in the form in which it had been adopted, because it required a majority of all the votes cast at any election, not only on the subject of banking, but on all others, before a bank charter could be obtained. This he thought was requiring too much—was unfair. He thought a majority of all the votes cast on that subject was all that could reasonably be required. He would therefore vote for the present amendment and would afterwards vote for the article.

Mr. Chase hoped the convention would not concur in the amendment. He thought a majority of all the votes cast should be required, because otherwise a banking system might be established through the inattention of the people, when, if there had been a full expression of their will, they would have voted it down. A majority was required to elect a president of the United States, and he thought there would be no more unfairness in requiring it to carry a banking system.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 30; for the vote see Appendix I, roll call 117].

The question was then taken upon the second amendment, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 31; for the vote see Appendix I, roll call 118].

The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 51, negative 13; for the vote see Appendix I, roll call 119].

No. 17, article on education and school funds, was then taken up, when Mr. Larkin moved to amend section 5 by striking out after the word "and" in the third line the word "sixteen" and inserting the word "twenty," which was agreed to. And a division having been called for, there were 30 in the affirmative and 23 in the negative.

Mr. Chase moved to amend section 4 by striking out the words "may be" and inserting the word "practicable," which was agreed to.

Mr. Foot moved to amend section 7 by striking out in the third line the word "shall" and inserting the word "may," which was agreed to.

Mr. Case moved to amend section 6 by striking out in the sixth line the word "three" and inserting the word "six."

Mr. McDowell hoped the amendment would not prevail. He hoped gentlemen would consider the case of the sparsely settled districts, where it was with the utmost difficulty that schools could be kept up even three months. If they were to be deprived of the public money unless they kept up schools six months in a year, it would be very injurious to them. Mr. Vanderpoel also hoped the amendment would not prevail. There was no precedent for it in any other state, and it was unjust. He thought that three-months schools were all that should be required to entitle districts to the public money.

The amendment was disagreed to.

Mr. Sanders moved to amend section 8 by striking out the words "at or near the seat of government," which was disagreed to. And a division having been called for, there were 25 in the affirmative and 28 in the negative.

Mr. Castleman moved a reconsideration of the vote taken on the motion of Mr. Foot to amend section 7 by striking out in the third line the word "shall" and inserting the word "may," which was disagreed to.

Mr. Foot moved to amend section 7 by adding "But no appropriation shall be made for such purpose until every child shall have the privilege of a common school education, gratis," which was disagreed to.

Mr. Whiton moved to strike out section 7.

Mr. Whiton said it merely gave the legislature a power which they would have without it. Mr. Kilbourn said the section was more than permissive. It permitted the establishment of an academy in counties which had more than 20,000 inhabitants, but by the rule of construction that the expression of an affirmation excludes the negative, it prohibited the establishment of academies in counties which had less than 20,000. Mr. Whiton thought it should not do so, if it did. Mr. Kilbourn said the gentleman would observe that the prohibition was only in regard to academies, not normal schools; and that before the public fund had so accumulated, there would be an excess above the wants of the primary and common schools. It was probable that most counties would have 20,000 inhabitants. It was only in case of an excess of funds that an academy could be established at all.

Mr. Lovell said that the third section provided that the residue, after the wants of primary schools were established, might be applied to academies, but the seventh section provided in general that the legislature might apply the school fund to the erection of academies. He thought it would bear the construction that the legislature had power to apply the whole fund to the erection of academies. He thought the better way would be to strike out the whole section.

Mr. Root remarked that by the amendment substituting "may" for "shall" the object of the committee in this section had failed to some extent. Their object was that after the common schools were provided for, the residue of the funds might be applied to the support of normal schools and academies. What would probably be the mode in which it would be applied? Probably this: A tax would be levied on the people of a county to build an academy, and when built, an appropriation would be made from the excess of the school fund to aid in endowing it. Now it might have operated with severity on small counties to build an academy in this manner. Hence the article had provided that no such tax should be laid till the population reached 20,000. There was but one county now of that number of inhabitants in the territory. He said the proper application of the school funds was so to apply them as to stimulate private liberality. So in the scheme of the committee, they had said throughout to the towns and counties—if you will raise one dollar, we will give you two dollars. If you will raise \$2,000, we will give you \$4,000. It was not contemplated by the committee to build

academies with the school fund, but to offer it as a bounty to the counties in case they would build them. When a county contained more than 20,000 inhabitants, there would be in it about 100 district schools, which would require teachers. How were they to be provided? The committee thought by normal schools and academies. The machinery through which it would be done would probably be the supervisors. They would have the control of them and would appoint the teachers thus educated among the towns in some just ratio. Milwaukee would have an academy immediately. Racine would soon have one, and there would be a number in a few years. If the section were struck out, there would be no provision for academies, and as the gentleman from Racine (Mr. Lovell) had said, the whole school fund might be appropriated to academies, or more. There would be no systematic provision. He thought that it was wise to retain the section as it was, but that it would have been better if "may" had not been substituted in place of "shall."

Mr. Sanders said if the provision were retained it would be unjust. The effect of it would be to give the whole benefit of the fund so far as academies were concerned to the larger counties. Such counties as St. Croix, Chippewa, and La Pointe would not probably get any benefit from the academy fund for fifty years. That would be most unjust to them. It should certainly be in the power of the legislature to establish an academy in a sparsely settled district like that he had mentioned for the common benefit of a number of counties—not compel the people to send their children to Milwaukee to be educated.

Mr. Harvey said he thought the convention had been hasty in striking out the word "shall" and had unconsciously undermined the whole system contemplated by the committee. At first it was obligatory on the legislature to establish academies; now it was barely permitted in one case and forbidden in another. We had included all persons between the ages of four and twenty as scholars proper for instruction in primary schools. By the statistics of New York the number of persons between the ages of five and sixteen is found to be one-third of the whole population, and certainly those between the ages of four and twenty among us would be a greater proportion. A county containing 20,000 inhabitants would then have about 7,000 scholars, and they would need 150 or 175 teachers. Should not a county, when it needed so many teachers, have an

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academy to prepare them? He hoped some gentleman who had voted to strike out "shall" would move to reconsider the vote.

Mr. Castleman moved a reconsideration, but was not heard by the President.

Mr. Kinne hoped the whole section would be struck out, because he believed, if retained, it would endanger the proper application of the school fund. The counties containing over 20,000 inhabitants would be continually making efforts to get all they could by the school fund for the benefit of their academies. He had no doubt it was the intention of the committee that the school fund should not be appropriated to the erection of academies, but they had not provided against it in the article they had reported. Under that article it might and probably would be done. He said that until we saw the practical working of the school fund we could not tell how much revenue it would yield. Gentlemen assumed that it would be ample for all purposes, but we were not sure of it, and we had better wait and see—not bind the legislature by a constitutional provision to establish academies when the fund might not be sufficient to bear it. As to the equality of the proposed academy system between counties, there was but one now entitled to any benefit under it, and though it was said that several others soon would be, yet it should be remembered that most of them might and probably would be divided, so that they might never get any benefit from it. It was impossible to have one academy for a number of small counties, but they must wait till each had 20,000 inhabitants. The gentleman from Rock (Mr. Harvey) had said that the word "shall" should be restored and then the legislature would be obliged to establish academies in counties containing over 20,000 inhabitants and might establish them in counties containing less, in their discretion. Striking out the whole section would leave the whole power in their hands, and he thought it would be preferable.

Mr. Estabrook hoped his colleague and the gentleman from Racine (Mr. Sanders) might each be blessed with a wife and half a dozen children; and then he was sure they would think differently in regard to this matter. He had never seen any man with a family of children to educate who thought the school laws were too stringent or required too much. He thought that striking out the word "shall," which made it imperative upon the legislature to establish academies and normal schools, was undermining the whole system proposed. It was a notorious fact that while

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education is the most important of all interests, it is the one in which there is the least concern felt by the community in general or by their representatives. Orators might, on public occasions, talk largely of the necessity of education, or glorify over the morale of intellect, and the people assent to it all; but the truth was, a perfect apathy pervaded the entire community in relation to it. People looked upon schools as merely a place for sending their children to get rid of them; they rarely or never visited them, or took the pains to ascertain how they were conducted. It was in view of this state of facts that the committee had made it obligatory upon the legislature to put in operation the school system throughout. As to the number of inhabitants required when an academy was required to be established, if the number was thought to be too high, he was willing to modify it, but he was not willing that the whole section should be struck out and the whole binding force of the system taken away.

Mr. Sanders said he had supposed the gentleman from Walworth was his friend, but he began to doubt it when he saw him wish to saddle him with a wife and half a dozen children. The gentleman had said that his main object was to make the carrying out of the system obligatory, and that the legislature would still have power in their discretion to establish academies in the small counties. True the legislature might authorize the establishment of academies in small counties, but only at the expense of those counties. The gentleman must know that by the article as it stood they could not apply the public money to that purpose. It was very true that academies and normal schools were necessary; and it was true that the smaller counties wanted the benefit of them. Under this plan it would be years and years before the smaller counties could derive any benefit from them. Gentlemen must see this; and especially members who represent the smaller counties must see it. It was unjust to them and injurious to the cause of education, and he hoped it would be struck out. To try the sense of the convention he would move to reconsider the vote striking out the word "shall." Mr. Judd spoke. The motion to reconsider was lost.

The motion to strike out was agreed to.

Mr. O'Connor moved to amend section 6 by striking out in the second line the word "one-half" and inserting "one-third, nor a sum equal to," which was agreed ["disagreed" in MS] to.

Mr. Lovell moved to amend section 3 by striking out the second clause and inserting: "Second. To the support and maintenance of one or more normal schools, with suitable libraries and apparatus therefor.

"Third. The residue shall be applied to the support and maintenance of academies in different counties of the state, in proportion to the population therein," which was disagreed to. And a division having been called for, there were 19 ["10" in MS] in the affirmative and 30 in the negative.

Mr. Pentony moved to add to section 8 the following: "And no sectarian instruction shall be allowed in said university," which was agreed to.

The question was then put upon ordering the article to be engrossed and read a third time, and was decided in the affirmative.

The convention then resolved itself into committee of the whole for the further consideration of No. 12, article on internal improvements, Mr. Beall in the chair.

Mr. Fox said he did not intend to make a long speech about the prosperity of New York or the troubles of Michigan, on the score of internal improvements; but he was willing to weigh arguments. If other states had been imprudent or unfortunate in carrying out systems of internal improvements, it was no reason for prohibiting them among us, but only for greater caution. He did not think because one man got drunk that the making of brandy should be prohibited. These improvements were absolutely necessary to develop the resources of the state, and it was not wise to put it out of our power absolutely to make them. The misfortunes of other states had prejudiced the people against any system of the kind at the present, and it might be very proper; at all events, it would afford a strong guarantee that they would not sanction by their votes any scheme which might be proposed to them, unless it were a proper one. He merely wished to give the legislature power to submit a law to the people. It was proper to do this at any time, and it was right to make the improvement whenever the people were in favor of it and were willing to tax themselves for that purpose. His proposition did not permit the creation of any state debt. He thought that if speculators would not make the improvements required, we should retain the power to make them ourselves. We might provide for tying up the people's hands, but we could not tie up their votes. If any gentleman, however, could improve upon the proposition he had made, he would be glad to see it. Mr. Chase was sorry he could not go with his Democratic friend in this matter. He thought that before the people would be willing to vote for any scheme of internal improvements to be carried out by the state, the con-

Mr. Lovell moved to amend section 3 by striking out the second clause and inserting: "Second. To the support and maintenance of one or more normal schools, with suitable libraries and apparatus therefor."

"Third. The residue shall be applied to the support and maintenance of academies in different counties of the state, in proportion to the population therein," which was disagreed to. And a division having been called for, there were 19 ["10" in MS] in the affirmative and 30 in the negative.

Mr. Penning moved to add to section 3 the following: "And no restriction shall be allowed in said university," which was agreed to.

The question was then upon ordering the article to be engrossed and read a third time, and was decided in the affirmative.

The convention then resolved itself into committee of the whole for the further consideration of No. 12, article on internal improvements. Mr. Beall in the chair.

Mr. Fox said he did not intend to make a long speech about the prosperity of New York or the troubles of Michigan, on the score of internal improvements; but he was willing to weigh arguments. If other states had been impudent or unfortunate in carrying out systems of internal improvement, it was no reason for prohibiting them among us, but only for greater caution. He did not think because one man got drunk that the making of brandy should be prohibited. These improvements were absolutely necessary to develop the resources of the state, and it was not wise to put it out of our power absolutely to make them. The misfortunes of other states had prohibited the people against any system of the kind at the present, and it might be very proper; at all events, it would afford a strong guarantee that they would not sanction by their votes any scheme which might be proposed to them, unless it were a proper one. He merely wished to give the legislature power to submit a law to the people. It was proper to do this at any time, and it was right to make the improvement whenever the people were in favor of it and were willing to tax themselves for that purpose. His proposition did not permit the creation of any state debt. He thought that if speculators would not make the improvements required, we should retain the power to make them ourselves. We might provide for tying up the people's hands, but we could not tie up their votes. If any gentleman, however, could improve upon the proposition he had made, he would be glad to see it. Mr. Chase was sorry he could not go with his Democratic friend in this matter. He thought that before the people would be willing to vote for any scheme of internal improvements to be carried out by the state, the con-

stitution we were forming would have lived out its time, and a new one been adopted. At any rate, the people were strongly opposed to it now, and he did not want to encumber the constitution with any such unpopular provision. The amendment was adopted, 23 to 14.

Mr. Martin offered an amendment to section 3, the effect of which was, when a donation had been made for any particular improvement and was not sufficient for that purpose, to allow the state to pledge the revenues of the work to raise means to complete it.

Mr. Whiton opposed it, as leaving open the door for a system of internal improvements and the creation of a state debt.

Mr. Martin said the gentleman must have shut up his ears, for the amendment prohibited the very thing he feared. It merely gave power to pledge the revenue of the incomplete work to any person or company which would complete it. The idea was drawn from the state of Michigan. She found herself a few years ago with the Central Railroad on her hands, partly completed, without the means of finishing it. So she made an arrangement with a company in Boston to complete it, and keep it till they had paid themselves out of the revenue of it, and then it would revert back to the state. There was no debt incurred—no credit of the state pledged. He was prompted to offer the amendment in consequence of a grant of land having been made by Congress of 300,000 acres for the improvement of Fox River. The estimated expense of that work was \$260,000. It was possible that by bad management the lands might not suffice for the completion of the work, and out of abundant caution he had proposed his amendment.

Mr. Whiton suggested an alteration of the amendment. Mr. Martin said he did not pretend to be a linguist, and the long discussion he had listened to that afternoon on education had not improved him any, even though the gentleman from Rock had participated largely in it. His intention was the same as that of the gentleman from Rock, and he would be obliged to him if he would clothe it in proper language. As to the insinuation that he had intended to get anything into the constitution blindfolded, he repelled it. It was false. His design was simply what he had stated.

Mr. Chase said he was in favor of the amendment, as intended by the gentleman from Brown, but he thought with the gentleman from Rock that the language would bear another construction. He hoped it would be amended.

Mr. Martin modified his amendment so as to read: "but may pledge or appropriate the revenues to be derived from such work towards its completion."

Mr. Reed hoped the amendment would prevail. It was a matter of great consequence to provide for such a contingency as that contemplated. There was no question but that if the fund were properly managed, it would be sufficient; but if it should not be, then, unless the amendment were adopted, it could not be completed at all.

The amendment was adopted.

The committee then rose and by their chairman reported the article back to the convention with amendments, and asked the concurrence of the convention therein.

The question being on concurring in the amendments of the committee, Mr. Chase called for a division of the question. The question was then put upon concurring in the first amendment, which was to amend the article by inserting the following to stand as section 2: "The legislature shall have power at any regular session to pass a law authorizing a work of internal improvement. Such law shall embrace but one work or object of improvement, which shall be distinctly specified therein and have but two points of termination. And such law shall provide for levying a tax sufficient, with other sources of revenue, to complete said work within — years after the passage of the same. And no such law shall be valid or take effect unless the same shall have been submitted to a separate and distinct vote of the electors at the next general election succeeding the passage of said law and shall have received in its favor a majority of all the votes cast at such election on that subject."

Mr. Sanders said that since the amendments which had been made in committee of the whole, he hoped the amendment would not be concurred in. Mr. King said the adoption of the amendments, he thought, was a good reason why it should prevail. He thought not only that Fox River should be improved, but that the Lake Michigan and Mississippi Railroad should be built, and other improvements made, or at least a chance left for making them.

Mr. Gale said he had hoped that no one would attempt to force into the constitution any provision which would allow our state to plunge into the gulf of internal improvements, which had swallowed up the credit and prosperity of so many of our sister

states. He was opposed to the amendment offered by the gentleman from Dane (Mr. Fox) and to the whole system. The state is not the proper person or the proper party to carry on that system; neither did he believe it to be within the legitimate duties of a state government, for the reason of its unequal benefits to the whole people. The state could not carry on such works in as economical a manner as private individuals or joint stock corporations. The actual costs of the necessary legislation during the progress of the work is always a very large item in the sum total of the cost of such work. The state of New York had been quoted as having prosecuted works of internal improvements with complete success, but he thought that gentlemen would find that their works had cost nearly twice as much as they would if prosecuted by private corporations. Their legislation alone on that subject had not only been the source of many bitter feelings, but had cost the state many hundred thousand dollars. The cost of legislation in this territory, on the Milwaukee and Rock River Canal, had, without doubt, far exceeded the amount actually expended on the work.

But had the people demanded that such works should be carried on by this state? He believed they had not. The provision prohibiting these works by the state, in the last constitution, gave unusual satisfaction to the people, as far as he had heard an expression. Indeed, that article had been often pointed out as one of the strongest reasons for supporting that instrument. If this amendment was adopted, he feared it might endanger the adoption of the constitution. In fact, one of the strongest arguments against the formation of a state government was that as soon as the government was formed the state would plunge into such works and become bankrupt like most of the northern states. He had always combated that argument by the assertion that Wisconsin had learned a lesson from the other western states they would not soon forget; but he now feared the argument was too true.

It is contended that the provision that the law shall be submitted to the people before it takes effect is a sufficient protection; but he could see how it might be carried by the chartering of a railway from Milwaukee to the Mississippi through to the most populous part of the state; and by combining interests a majority could be obtained for it. The minority of the people

would then be loaded with taxes to construct a work that would not be of an advantage to them of one dollar. He believed it was the duty of government to make the benefits to be derived from taxation as equal as the burdens, and not tax large minorities for the sole benefit of the majority. Without following this principle the great objects of civil government would be lost. He was anxious that the constitution adopted by this convention should be one conferring equal benefits to all.

Mr. Fox said if the gentleman referred to him in his remarks about the consistency of members in voting to leave this subject to the people, when they had voted to leave the banking question to them, he would inform him that he had been consistent—he had voted to leave the bank question to the people, as the journal would show. As to the arguments he had gone into, he did not consider them of much weight. It seemed clear to him that if the people were able and willing to make any improvements, they should have the power to do so. Mr. Castleman said he would suggest an amendment which he doubted not the gentleman from Dane would gladly accept. It was to strike out the words “on that subject.” The gentleman had been very strenuous for that principle on another occasion, and it was an old maxim that “what was sauce for the goose was sauce for the gander.”

The question was then put upon the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 29; for the vote see Appendix I, roll call 120].

Mr. Sanders moved that the convention adjourn, which was disagreed to. And a division having been called for, there were 26 in the affirmative and 29 in the negative.

The question was then put upon the second amendment, which was to insert [after] the words “dedicated thereto” the following: “and may pledge or appropriate the revenue to be derived from such work towards its completion,” which was agreed to.

Mr. Sanders moved that the convention adjourn, which was agreed to. And a division having been called for, there were 35 [“38” in MS] in the affirmative, negatives not counted. So the convention adjourned.

SATURDAY, JANUARY 15, 1848

Prayer by the Rev. Mr. Lord.

The journal of yesterday was read.

Mr. Gifford presented two petitions from the inhabitants of Waukesha County on the subject of homestead exemption. Mr. Chase moved that the same be referred to the committee of the whole, which was agreed to.

Mr. Chase introduced the following resolution, to wit: "*Resolved*, That the committee on general provisions be instructed to report an article on amendments to and revision of this constitution." And the fifth rule having first been suspended for that purpose, the said resolution was adopted.

Resolution No. 1, introduced by Mr. Vanderpoel yesterday, was taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. Sanders gave notice that he would move a reconsideration of the vote taken on the tenth instant on the passage of No. 5, article on boundaries.

No. 12, article on internal improvements, was then taken up, when Mr. Harrington moved a reconsideration of the vote taken yesterday on concurring in the first amendment of the committee of the whole. And the question having been put, it was decided in the affirmative. The question then recurred on concurring in the amendment of the committee, when Mr. Folts moved to amend the amendment by adding as follows: "*Provided*, That no law authorizing any internal improvement be submitted until the improvement previously submitted and adopted be finished and paid for." The question was then put upon the adoption of the same, and was decided in the negative. And a division having been called for, there were 20 in the affirmative and 23 in the negative.

Mr. Doran moved to amend the amendment by striking out the words "and have but two points of termination." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 24, negative 36; for the vote see Appendix I, roll call 121].

Mr. Chase moved a call of the convention, which was ordered, and Messrs. Biggs, Crandall, Harvey, and Warden reported absent. Mr. [Colley] moved that Mr. Crandall be excused from his attendance, which was agreed to.

The sergeant at arms was sent for the absentees. Mr. Jackson moved that all further proceedings under the call be dispensed with, which was disagreed to.

The sergeant at arms having reported the absentees in attendance, [the question being upon concurring in the amendment of the committee,]

Mr. Sanders said he would vote against the amendment. It was entirely different from that which he had proposed and which had reference to the improvement of the navigable waters leading into Lake Winnebago and the Mississippi River. These he considered the great objects of internal improvement in Wis-

consin, and he could not vote for any system which would be inconsistent with this object.

Mr. Kilbourn thought the subject before the convention was one which ought not to be discussed, as he thought the minds of members were made up on it, and made up in the negative. It was true that the vote of yesterday was calculated to lead to a different conclusion. It was proposed by the amendment to mark out a course by which internal improvements might be made; yet that course, if attempted, would prove an entire failure. Such a clause inserted in the article might induce the legislature to pass some time in legislating upon the subject of internal improvements, and by so doing involve a certain expense, without any corresponding good, for no law providing for the construction of any single work of internal improvement as provided by the amendment would be sanctioned by the people.

Mr. Judd spoke briefly in favor of the amendment.

The question was then put upon concurring in the amendment of the committee, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28, negative 36; for the vote see Appendix I, roll call 122].

Mr. Sanders moved to amend the article by substituting the following:

"Section 1. This state shall encourage internal improvements by individuals, associations, and corporations, but shall not carry on, or be a party in carrying on, any work of internal improvement except in cases authorized by this article.

"Section 2. The legislature shall have power at a regular session to pass laws authorizing the improvement of the navigable waters leading into the Mississippi or Lake Michigan and the carrying places between the same: *Provided*, however, That the legislature shall not pass more than one act at the same session, and such law shall embrace no more than one object of improvement, which shall be singly and specifically stated therein.

"Section 3. Every such law shall impose and provide for the collection of a direct annual tax to pay [and sufficient to pay] the interest on the debt that may be incurred by such works as fast as the same shall fall due, and also to pay and discharge the principal of such debt within fifteen years from the time of the contracting thereof.

"Section 4. On the final passage of such law in either house of the legislature the question shall be taken by ayes and noes, to be duly entered on the journals thereof. No such law shall take effect until it shall at a general election have been submitted to the people and have received a majority of all the votes cast at such election.

"Section 5. The legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same and may at any time by law forbid the contracting of any

further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable and be annually collected until the proceeds thereof shall have been sufficient to pay and discharge the interest and principal of such debt and liability.

"Section 6. The money arising from any loan or stock creating such debt or liability shall be applied to the work specified in the act authorizing such debt or liability, and for no other purpose whatever.

"Section 7. The state shall not at any time incur or create debts or liabilities for works of internal improvement which shall singly or in the aggregate exceed \$300,000.

"Section 8. No such law shall be submitted to be voted on within four months after its passage or at any election where any other law or any bill or any amendment to the constitution shall be submitted to be voted for or against.

"Section 9. When grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such work and shall devote thereto the avails of such grants so dedicated thereto."

And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 9, negative 54; for the vote see Appendix I, roll call 123].

The question was then put upon ordering the article to be engrossed and read a third time, and was decided in the affirmative.

The convention then resolved itself into committee of the whole for the consideration of No. 5, resolution relative to public lands, Mr. Fenton in the chair.

Mr. Prentiss proposed to amend the first section by dividing it into two separate sections, each embracing a distinct subject, so that if Congress should reject the proposition contained in one of them, they might still adopt the other. Mr. Prentiss' amendment was adopted.

Mr. Castleman moved that the committee rise and report the resolutions back to the convention as amended.

Mr. Judd hoped that the gentleman would withdraw his motion. He wished the subject matter of these resolutions to be more fully discussed, and was by no means clear as to the propriety of them as they stood. Mr. Judd went on to state his objections. Mr. Castleman withdrew his motion.

Mr. Prentiss thought that the gentleman from Dodge, as a member of the last convention, ought to be familiar with the subject matter of these resolutions, as they passed that body almost unanimously. Whatever amount of the odd sections might

have been sold, that amount the state would owe to the school fund. If none, then the state would hold them for the benefit of the school fund. It would make no difference in point of fact what might have been the amount of canal lands sold.

Mr. Judd replied. Mr. Prentiss explained. Mr. Vanderpoel said that about 100,000 acres of these lands had been disposed of, which, as a matter of course, must create a debt either to the school fund or to Congress. His individual feeling about the matter was that as a part of the fund arising from this source had been expended in making constitutions no debt should be incurred by the state on this account, but that it should be deducted from the five hundred thousand acres due to the state, the balance of which should be given to the school fund.

Mr. Chase was not aware whether more than \$1.25 had been paid for the land sold by the territory. If it had, would not we owe the excess to individuals?

Mr. Vanderpoel said that the fact in reference to the excess was that the greater portion of the settlers on the canal lands had purchased and settled on them and paid \$2.50 per acre, in view of the canal being constructed. The canal bubble had burst. They, being the losers, required buyers to refund the excess of \$1.25 per acre over the government price, inasmuch as the object by which they were induced to pay the additional price had entirely failed.

Mr. Castleman said that the grant from the government required that the lands should not be sold for less than \$2.50 per acre. Accordingly they were so sold at the first sale, but only ten per cent of the purchase money was paid down, and the rest left at a long credit. By subsequent legislation \$1.25 of the purchase money had been remitted. There were a very few purchasers, however, who paid down the full amount of \$2.50 per acre and obtained their patents at once. By subsequent acts of the legislature their interests also had been taken care of. The debt now remained on the territory and was to be paid to somebody. It seemed better that it should be so arranged as to be paid here among ourselves than to Congress. When Congress made the grant and fixed the minimum price of the even sections at \$2.50, it in fact gave nothing; for if it gave away one half, it sold the other for a double price. The resolutions proposed to Congress to take the lands at \$1.25 per acre and put the purchasers of the

have been sold, that amount the state would owe to the school fund. If none, then the state would hold them for the benefit of the school fund. It would make no difference in point of fact what might have been the amount of canal lands sold.

Mr. Judd replied. Mr. Fremont explained. Mr. Vanderpool said that about 100,000 acres of these lands had been disposed of, which, as a matter of course, must create a debt either to the school fund or to Congress. His individual feeling about the matter was that as a part of the land arising from this source had been expended in making constitutions no debt should be incurred by the state on this account, but that it should be deducted from the five hundred thousand acres due to the state, the balance of which should be given to the school fund.

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even sections on the same footing on which "we" had placed the purchasers of the odd sections. The settlers on the canal lands had held several meetings and adopted almost unanimously such resolutions as seemed to them to be right in regard to the remission of the excess of price.

Mr. Whiton expressed his views on the subject and was in favor of a resolution to form one of those presented [sic], requiring the legislature to refuse its assent to the act of Congress.

Mr. Prentiss said that had been omitted because it was deemed superfluous. The grant having expired from its term, there was no necessity for the first legislature to express assent or dissent. The grant required that the legislature should give its assent in positive terms, and a neglect to do so would be considered a dissent. Mr. Bishop here offered a resolution to stand as number one, requiring that the legislature at its first session should refuse its assent to the act of Congress. Mr. Chase could see no necessity for the adoption of this resolution. We could not have a legislature in time to accept the grant, and if it could not accept, it could not refuse in time to be of any benefit. He was opposed to it as unnecessary and superfluous. Mr. Martin hoped the resolution would not be adopted. The action of the convention seemed to be predicated on the supposition that Congress would approve the resolution. Now if the resolution should be adopted, and Congress should not approve, the lands would revert to the United States, and 175,000 acres of land would be withdrawn from the five hundred thousand acres appropriated to the school fund. The act originally required this to form part of the five hundred thousand acres. The idea had been suggested that we had created a debt and would be liable to pay to the United States the value of the land sold. This was utterly untrue. The act of 1841 protected the state from that. Even if every acre had been squandered, the state would not be liable to the general government, for the act of 1841 makes the grant absolute to the state.

The question was then taken on Mr. Bishop's amendment, and it was rejected.

The committee then rose, and by their chairman reported the resolution back to the convention with an amendment.

The question was then put upon concurring in the amendment of the committee, which was to strike out all after "United States" in the sixteenth line of the first resolution and insert the following to stand as section 2: "*Resolved,*

That Congress be further requested to pass an act whereby the excess price over and above \$1.25 per acre, which may have been paid by the purchasers of said even sections which shall have been sold by the United States, be refunded to the present owners thereof, or they be allowed to enter any of the public lands of the United States, to an amount equal in value to the excess so paid as aforesaid"; and was decided in the affirmative.

The question was then put upon the adoption of the resolution as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 56, negative 3; for the vote see Appendix I, roll call 124].

Mr. Richardson moved that the convention take a recess until two-thirty o'clock P.M., which was agreed to.

HALF PAST TWO O'CLOCK P.M.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 12, article on internal improvements.

Mr. Case moved that the convention adjourn. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 20; for the vote see Appendix I, roll call 125].

So the convention adjourned.

(Samuel Crawford Esq., counsel for Mr. O'Connor, sustained in a lengthy argument the right of that gentleman to the seat he held in this convention, which was contested by Mr. Hamilton. Mr. Dunn, who had been adverted to in the course of the argument, made some remarks in explanation of the action he had taken.)

And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 63, negative 2; for the vote see Appendix I, roll call 126].

On motion of Mr. King the convention adjourned.

That Congress be further requested to pass an act whereby the excess price over and above \$1.25 per acre, which may have been paid by the purchasers of said sections which shall have been sold by the United States, be refunded to the present owners thereof, or they be allowed to enter any of the public lands of the United States, to an amount equal in value to the excess so paid as aforesaid; and was decided in the affirmative.

The question was then put upon the adoption of the resolution as amended, and was decided in the affirmative. And the eyes and noses having been called for and ordered, those who voted in the affirmative were [affirmative 50, negative 3] for the vote see Appendix I, roll call 121.

Mr. Richardson moved that the convention take a recess until two-thirty o'clock P.M., which was agreed to.

ROLL CALL TWO O'CLOCK P.M.

Mr. Richardson, from the committee on arrangements, reported as correctly engrossed No. 12, article on internal improvements.

Mr. Case moved that the convention adjourn. And the question having been put it was decided in the affirmative. And the eyes and noses having been called for and ordered, those who voted in the affirmative were [affirmative 52, negative 30] for the vote see Appendix I, roll call 122.

So the convention adjourned.

MONDAY, JANUARY 17, 1848

Prayer by the Rev. Mr. Lord.

The journal of Saturday was read.

Resolution No. 5, reported by Mr. Whiton from the committee on the contested seat of Mr. O'Connor on the thirteenth instant, was taken up, when on motion of Mr. Whiton it was ordered that in the case of the contested election, the consideration of which is made the special order of the day, the contestant shall be first heard by himself or his counsel, and then the sitting member by himself or his counsel, and afterwards the contestant may again be heard by himself or his counsel, after which neither party shall again be heard on the subject.

(Mr. Hamilton addressed the convention at great length in support of his right to the seat occupied by Mr. O'Connor. As the proceedings on this question form no part of the regular business of the convention, they are omitted.)

The question pending being on the adoption of said resolution, Mr. Fitzgerald moved that the convention take a recess until half past two o'clock, which was agreed to.

HALF PAST TWO O'CLOCK P.M.

The question pending being on the adoption of the resolution relative to the contested seat, which was "*Resolved*, That William S. Hamilton is not entitled to the seat in this convention now occupied by the Hon. John O'Connor,"

(Samuel Crawford Esq., counsel for Mr. O'Connor, sustained in a lengthy argument the right of that gentleman to the seat he held in this convention, which was contested by Mr. Hamilton. Mr. Dunn, who had been adverted to in the course of the argument, made some remarks in explanation of the action he had taken.)

And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 63, negative 2; for the vote see Appendix I, roll call 126].

On motion of Mr. King the convention adjourned.

TUESDAY, JANUARY 18, 1848

Prayer by the Rev. Mr. Read.

The journal of yesterday was read.

The following petitions were presented on the subject of homestead exemption, to wit: by Mr. Chase, from inhabitants of Fond du Lac County; by Messrs. Davenport, Sanders, Secor, and A. G. Cole, from inhabitants of Racine County; which were referred to the committee of the whole. Mr. Prentiss presented a remonstrance from sundry inhabitants of Dodge County on the same subject, which was referred to the same committee.

Mr. Sanders presented a petition from sundry inhabitants of Racine County on the subject of school lands, which was referred to the committee on education and school funds.

Mr. Case, from the select committee on that subject, made the following report, to wit:

"The select committee appointed to ascertain the probable cost of printing and binding the journal and sketches of debates of this convention report that they have had the subject under consideration and have received the following communication from the printers in answer to the inquiry made by the committee, which is herewith submitted as a part of this report:

"Respectfully submitted

S. S. CASE

S. A. DAVENPORT

JOHN O'CONNOR"

Messrs. Case, Davenport, and O'Connor

GENTLEMEN: In compliance with your request to furnish an estimate of the probable expense of printing the journal of the convention, we have the honor herewith to submit a statement as correct as can be made at this time:

[Editor's Note: The following figures appear to have been corrected by the first editors of the manuscript journal.]

Composition—65 cents per 1,000 ems.

Each page contains 1,750 ems.

100 pages composition	\$113.75
400 pages composition	455.00
500 pages composition	568.75
600 pages composition	682.50
700 pages composition	796.26
800 pages composition	910.00

Press Work—per token, 65 cents:

On 400 pages	\$ 97.75
On 500 pages	122.85
On 600 pages	148.20
On 700 pages	175.55
On 800 pages	198.90

Stock—per ream, \$5.00; for 500 copies (500 pages)

about \$250.00

Each additional hundred pages, about 8½ reams, at the same price.

Binding—In pasteboard, same style as the journal of last convention, we are informed can be obtained at from 30 to 40

cents per copy. Say 35 cents, 500 copies\$175.00

The resolution calls for information as to the cost of the debates, separate from the mere journal. We cannot give any definite information on this subject, for the reason that we have no data upon which to predicate an opinion. In the first ninety pages (now printed) the journal greatly exceeds in length the debates. It is our opinion, however, that when the volume is completed, the debates will fully equal, if they do not exceed, the journal in length.

The last convention was in session over twelve weeks, and the journal, though stretched to 506 pages as printed, would not make over 250 pages in the volume we are printing. The journal of the present convention in all probability cannot exceed 250 pages. Estimating the debates at 300, the whole volume will contain 550 pages, and the cost as estimated would be as follows:

Composition	\$625.62
Presswork	122.85
Paper and ink, etc., about	250.00
Binding, etc.,	175.00
Total	\$1,173.47

This, we believe, will not vary far from the actual cost of the work.

In conclusion we beg leave to add that we are printing this work on entire new type, ordered expressly for the occasion; that we have incurred an extra expense of \$5.00 per day in employing additional reporters, and that we have secured as competent and accurate ones as can be found in Wisconsin. The index for the work will be prepared on the plan of the journal of the New York convention and will be an extra charge. We design to have the whole volume finished in the best possible style—such an one as will prove an honor to the convention.

In regard to price, we shall charge the customary rates in all cases—rates never complained of by the legislature, and which will only afford us a fair compensation. We should deem it derogatory both to ourselves and to the craft to accept of prices below fair remuneration for services, use of capital, etc., and if there is to be any cutting down from the usual prices, thus putting our establishment on a footing with “rat offices,” we shall be under the necessity of asking the convention to accept of our labor and that of our workmen, without pay, as we can recognize no medium between a fair, living profit for our labor, and giving it to the public gratuitously.

The journal will be completed at the earliest practicable moment.

Very truly yours,

TENNEY, SMITH AND HOLT

Mr. Chase moved that the same be laid upon the table and ordered printed, which was agreed to.

Mr. Reed, from the select committee on that subject, reported the following resolutions, which were read, to wit: “Resolved, That the Congress of the United States be and is hereby requested, upon the admission of this state into the union, so to alter the provisions of the act of Congress entitled ‘An Act to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin rivers and to connect the same by a canal, in the territory of Wisconsin,’ that the price of the lands reserved to the United States shall be reduced to the minimum price of the public lands.

“Resolved, That the legislature of this state shall make provisions by law for the sale of the lands granted to the state in aid of said improvements,

The resolution calls for information as to the cost of the debate, separate from the more journal. We cannot give any definite information on this subject, for the reason that we have no data upon which to predicate an opinion. In the first ninety pages (now printed) the journal greatly exceeds in length the debate. It is our opinion, however, that when the volume is completed, the debate will fully equal it, if, do not exceed, the journal in length.

The last convention was in session over twelve weeks, and the journal, though attached to 500 pages as printed, would not make over 250 pages in the volume we are printing. The journal of the present convention in all probability cannot exceed 250 pages. Estimating the debate at 300, the whole volume will contain 550 pages, and the cost as estimated would be as follows:

Composition		\$175.00
Presswork		125.00
Paper and ink, etc., about		250.00
Binding, etc.,		175.00
Total		\$725.00

This, we believe, will not vary far from the actual cost of the work. In conclusion we beg leave to add that we are printing this work on entire new type, ordered expressly for the occasion; that we have incurred an extra expense of \$2.00 per day in employing additional reporters, and that we have secured as competent and accurate ones as can be found in Wisconsin. The index for the work will be prepared on the plan of the journal of the New York convention and will be an extra charge. We desire to have the whole volume finished in the best possible style—such as one as will prove an honor to the convention.

In regard to prices, we shall charge the customary rates in all cases—rates never complained of by the legislature, and which will only afford us a fair compensation. We should heartily disavow both to ourselves and to the craft to accept of prices below fair remuneration for services, use of capital, etc., and it there is to be any cutting down from the usual prices, that printing establishment or a looking with "yes" and "no" we shall be under the necessity of asking the convention to accept of our labor and that of our workmen, without pay, as we can recognize no medium between a fair living profit for our labor, and giving it to the public gratuitously.

The journal will be completed at the earliest practicable moment.

Very truly yours,

TENNESSEE, SMITH AND HARRIS

Mr. Chase moved that the same be laid upon the table and ordered printed, which was agreed to.

Mr. Reed, from the select committee on that subject, reported the following resolutions, which were read, to wit: "Resolved, That the Congress of the United States be and is hereby requested, upon the admission of this state into the union, so to alter the provisions of the act of Congress entitled 'An Act to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin rivers and to connect the same by a canal in the territory of Wisconsin,' that the price of the lands reserved to the United States shall be reduced to the minimum price of the public lands.

"Resolved, That the legislature of this state shall make provisions by law for the sale of the lands granted to the state in aid of said improvement,

subject to the same rights of preëmption to the settlers as are now allowed by law to settlers on the public lands."

Mr. Chase, from the committee on banks, banking, and incorporations, reported No. 19, article on incorporations, as follows:

INCORPORATIONS

"Section 1. Corporations without banking powers or privileges may be formed under general laws, but shall not be created by special act except for municipal purposes and in cases where in the judgment of the legislature the objects of the corporation cannot be attained under general laws. All general laws or special acts coming under the provisions of this section may be altered or repealed by the legislature at any time after their passage.

W. CHASE, Chairman"

Said article was read the first and second times and ordered printed.

Mr. Kilbourn, from the committee on general provisions, reported No. 20, article on amendments, as follows:

AMENDMENTS

"Section 1. Any amendment or amendments to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon and referred to the legislature to be chosen at the next general election; and shall be published for three months previous to the time of holding such election; and if in the legislature so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become part of the constitution: *Provided*, That if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately.

BYRON KILBOURN, Chairman"

Said article was read the first and second times and ordered printed.

The President announced the appointment of the following committee on revision and arrangements, to wit: Messrs. Dunn, King, Larrabee, Whiton, and Lovell.

Resolutions were introduced and read as follows, to wit:

By Mr. Lakin: "*Resolved*, That on Tuesday evening, January 25, A. D. 1848, this convention adjourn sine die."

By Mr. Carter: "*Resolved*, That this convention allow Horatio Tuttle \$2.50 per day as compensation for his services during the sitting of this convention."

By Mr. Foot: "*Resolved*, That the committee on miscellaneous provisions be instructed to report a provision by which the governor may by proclamation, in case of emergency, convene the legislature at any other time than that prescribed in the constitution, and that in case of invasion or danger from the prevalence of contagious diseases at the seat of government, he may in like manner convene it at any other suitable place within the state."

By Mr. Chase: "*Resolved*, That the committee on education be directed to inquire into the expediency of providing a coat of arms for the state, and to report such as they deem proper, if in their opinion it is expedient for this convention to adopt any."

By Mr. Lewis: "*Resolved*, That a respectful address be presented to the people of this territory, with the constitution that shall be approved by this convention, and that a committee of five members be appointed to draft and report the same to this convention."

By Mr. Sanders: "WHEREAS, the doorkeeper elected by this convention has vacated his office and left the convention without any officer to perform the necessary duties for which he was appointed; therefore *Resolved*, That Daniel N. Johnson be appointed doorkeeper pro tem."

Mr. Sanders moved a suspension of the fifth rule for the adoption of the resolution now, which was disagreed to.

No. 12, article on internal improvements, was then taken up and read the third time. And the question having been put upon the passage of the article, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 50, negative 15; for the vote see Appendix I, roll call 127].

No. 18, article on apportionment of representatives, was then taken up. Mr. Chase moved that the same be recommitted to the committee of the whole, which was agreed to.

The convention then resolved itself into committee of the whole for the further consideration of No. 18, article on apportionment of representatives, Mr. Wheeler in the chair.

Mr. Case moved so to amend as to give to the county of Waukesha two senators in place of one, and four members in the house instead of five. Mr. Case remarked that by the article as reported by the committee Waukesha had an unrepresented fraction of about 4,000. To remedy this inequality, he proposed to reduce the representation one in the house and increase it one in the senate, which would add one to the total of units of representation for that county. If that motion did not prevail, he would feel constrained to move that one be added to the representation now apportioned to that county in the house.

Mr. Lovell remarked that by adopting this amendment it would become necessary to run through the whole article and change the representation of every county in the territory. The amendment involved the necessity of an entirely new apportionment. Mr. Lovell went into a series of calculations to show the difficulty of making the proposed amendment without unsettling the entire apportionment. The county was underrepresented in the senate and overrepresented in the house. The committee which reported the article were governed in some measure, in placing the overrepresentation in the house instead of in the senate, by the difficulty of dividing the senatorial districts so as not to interfere with the representative districts. An article which had already passed provided that no representative district should be divided in the formation of a senatorial district, and in the case of Waukesha it would be very difficult to make an equitable division of the county into two senatorial districts without dividing some of the representative districts.

Mr. Castleman would state some reasons why the amendment of his colleague should prevail. He had no doubt but the committee with whom the article originated had very arduous duties imposed upon them, and it would not be strange if they had overlooked some circumstances which ought to weigh in favor of the proposition. He had conversed with many members on the subject, and so far as he had done so, they generally agreed that Waukesha was entitled to what she now asked for. But to those with whom he had not conversed privately he wished to state the facts in the case. Waukesha County had nearly 16,000 inhabitants—he would call it that in round numbers. The ratio of representation in the senate was about 11,000. Consequently, with one senator they would have a fraction unrepresented in the senate of about 5,000. With five members of the house they would be overrepresented in that body about 600. Deduct this from the 5,000 and it would have 4,400 unrepresented in either house—nearly enough to entitle them to two members of the house. Nearly all the counties which had fractions unrepresented in the senate were compensated by additional members of the house. This he thought was providing an undue preponderance in one branch of the legislature. The amendment did not propose to take a senator from any other county, but only to add one member to the senate. If this were done, the county would then be overrepresented about 1,500. The question was

simply whether the county should be overrepresented 1,500 or unrepresented 4,400. The northwestern counties preferred to have their unrepresented fractions in both houses compensated by representation in the lower house, because those counties being sparsely settled rendered it necessary that each representative should attend to the interests of a large area of country, and it was therefore an object with them to have their representation consist of the greatest number practicable, and under the circumstances he was not disposed to object to the policy, but in the more compact and densely settled counties, as in the case of Waukesha, there could be no objections to making up in the senate the fractions unrepresented in the house.

Mr. Judd here made some remarks.

Mr. King remarked that the question before the convention was one of figures, and of course a dry one; but if gentlemen would listen one moment, he would endeavor to place the question in its true light. It was impossible, with the contemplated size of the two houses, to apportion to Waukesha two senators and five representatives. The alternative was between giving to Waukesha one senator and five representatives, or two senators and four representatives. Mr. King then proceeded to show by figures the different results and bearings of the two alternatives.

Mr. Chase believed the adoption of the amendment would only open the door for further alterations. The population of Washington County was only about three hundred below that of Waukesha. If this alteration were made to accommodate Waukesha, the same alteration would have to be made to accommodate Washington County. This would so far reduce the senatorial ratio, that Walworth would have as strong a claim for another senator as Waukesha had then, and so on—every member added to the senate would reduce the ratio of representation and originate a new claim in some quarter for an additional senator. They must stop somewhere and, stop where they might, some county would be left with the largest unrepresented fraction. The hardship must fall somewhere. By the apportionment made by the committee it had fallen upon Waukesha, and he thought they should consent to bear it. The county would be well represented in numbers, and he had no doubt it would be ably represented and suffer no serious inconvenience from the loss of its unrepresented fraction.

Mr. Kilbourn thought the convention should not be deterred from doing justice by any such considerations as had been urged by the gentleman from Fond du Lac. If the apportionment was unjust, they should go to work and by proper amendments obviate the injustice as far as it could be done. He found that by setting off the territory into two grand divisions, one of them, containing a population of 115,000, would have but nine senators, while the other, with a population of only 97,000, would have ten senators. He could not see by what rule gentlemen could reconcile such an apportionment with the principles of justice. After apportioning the representation as nearly equally as possible among the smaller divisions of the state, he thought they should endeavor to equalize the representation still further by taking larger divisions of country and consolidating their fractions. If the two great divisions of the state to which he had alluded were to be equally represented in the senate, he would not complain; but he could not consent that a population of 97,000 should have a majority in the senate over a population of 115,000. The larger division of the country had an overrepresentation of six in the house. This would give them a majority of the aggregate overrepresentation, and he would not complain if the rights of the people were not compromised in the senate. The proposition of the gentleman from Waukesha (Mr. Case) would not equalize the representation in the senate of the two great divisions to which he had alluded, for this would require the addition of two or three members; but it would make it so nearly equal in the senate that, considering the overrepresentation in the house, he would be satisfied.

Mr. Castleman here gave some arithmetical calculations in reply to the remarks of Mr. Judd and Mr. Chase.

Mr. Chase said the gentlemen from Milwaukee and Waukesha had both misunderstood his remarks. He did not mean that any needless injustice was done to Waukesha, but that if Waukesha were taken from the extreme wing of unrepresented fractions and placed in the opposite position, some other county must be left in the same position which Waukesha before occupied. The difficulty was inseparable from a definite ratio of representation and the varying population of the counties. They might remove by amendment the hardship from one county, but it would then rest upon some other. Remove it from that and it would rest upon some

other ; and so they might follow up the inequality with amendments interminably without the possibility of destroying it.

Mr. Gifford had conversed with the committee on the subject before the article was reported, and endeavored to secure the apportionment of two senators and four representatives to Waukesha ; but finding the majority of the committee inflexible upon that point, he favored the present arrangement. Still he preferred two senators and four representatives, and as the proposition had been offered by his colleague he would vote for it.

Mr. Whiton here addressed the committee. Mr. Kilbourn replied—chiefly by arithmetical calculations. Mr. Lovell defended the report of the committee by a series of calculations.

The question was then taken on the amendment, and was decided in the negative. There were 20 in the affirmative and 26 in the negative.

Mr. Featherstonhaugh moved so to amend as to give to Calumet and Manitowoc one representative each. Mr. Featherstonhaugh remarked that the report of the committee put those two counties together and gave them one representative, and he asked that they might be separated and each have a representative, because the two counties were entirely disconnected so far as their settlements were concerned, and could not possibly act in concert. The peculiar circumstances of these counties had been appreciated by the legislature which fixed the representation in the last convention, and also by the last legislature in apportioning the delegates to the present convention, and they had been kept separate, and a sense of duty to his constituents induced him to urge upon the convention the necessity of adhering to these precedents in apportioning the legislature of the state.

Mr. Chase said he would vote for the amendment for the reasons stated by the honorable mover. To his personal knowledge the two counties, so far as facilities for acting together were concerned, were as entirely disconnected as Calumet and Racine. They were contiguous, it was true, but the settled portions of the two counties were separated by a wide strip of timbered country which cut off their intercourse and separated their interests.

Mr. Judd made some remarks.

Mr. Reed hoped the amendment would prevail. He could assure the committee from his personal knowledge that there was the most urgent necessity for it. The reasons urged in its favor by the

gentleman from Calumet and Fond du Lac were good and sufficient reasons, and he was in favor of the amendment, not only for these but for other reasons. He believed that every organized county should have one representative in the house. If two counties were put together in one representative district, the representatives must be taken from one of those counties and the other be left entirely unrepresented, for it would be impossible for a man in one county to be sufficiently familiar with the local wants and interests of another county to represent it properly. In the last legislature the county of Winnebago was represented by members from other portions of the district, and during the session the county seat of Winnebago was located, and he presumed not six men in the county knew anything about it till it was done. He did not say that it was improperly located, but he alluded to the circumstance to show that counties might suffer great injustice if represented by those who knew nothing of their particular wants or interests. The circumstances of the two counties in question were such that the same man could not represent them both. One was located on Lake Winnebago and the other on Lake Michigan, and separate and probably conflicting interests might arise. He was gratified to notice the liberal spirit which had been manifested by gentlemen who had expressed their views upon the amendment, and he could not but hope it would prevail.

Mr. Cole of Grant was willing to pursue a liberal policy to the northern counties, so far as was consistent with justice to other portions of the territory. He could not see why one man could not represent the two counties in question. They were contiguous to each other and he perceived by the map that the extremes were only thirty-five or forty miles apart. The gentleman from Winnebago thought they should give to each organized county one representative. He thought if the rule should be applied to all the northwestern counties, the gentleman would hardly be willing to adhere to his own principle. Suppose they should give to Crawford, Chippewa, St. Croix, and La Pointe four representatives; it must work great injustice to other portions of the territory, or the legislature must be increased to an unreasonable size.

The committee rose and reported progress and asked leave to sit again thereon. Leave was granted.

On motion of Mr. Vanderpoel the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The convention then resolved itself into committee of the whole for the further consideration of No. 18, article on apportionment of representatives, Mr. Wheeler in the chair.

Mr. Kilbourn withdrew the amendment offered by him in the forenoon.

Mr. Featherstonhaugh said he wished to get a vote as soon as possible on the amendment he had offered, to ascertain whether the convention were disposed to adhere rigidly to the apportionment as recommended by the committee, or whether they would allow of amendment. He thought the counties of Calumet and Manitowoc at any rate should be allowed each a representative. He could not accede to the doctrine in general that population only should be represented. It was too unstable a basis in a new country where the people were constantly changing—in a large tract which was fast filling up. But if population was to be strictly regarded, how did it happen that Portage was assigned one member of the assembly, and Calumet and Manitowoc together but one? Those two counties together had a far larger population than Portage, and if they were not strictly entitled to two representatives, they were reduced to the alternative of asking a little more than what they were entitled to, or receiving far less. But the great reason for not joining the two counties together and giving them but one member was that they were separated by nature and had no interest in common. Gentlemen had spoken of the barrier between them as a dense forest. It was more than that. It was a swamp through which there was no road, and which was wholly impassable to any but Indians. No white man had ever gone through. Under such circumstances it was unjust to join the counties together for election purposes on any pretense. He repeated that the system was wrong which made it necessary to do this. It was impossible, on the basis of population, to do justice to the small counties by giving them one-half or one-fourth of a member. The true way was to give to a certain amount of territory defined by boundary lines, or separated by nature and having a distinct interest, a representative at any rate. This reason applied with peculiar force in the case of Calumet and Manitowoc, and he hoped the liberality of the convention would accord a representative to each.

The amendment was adopted, 29 to 9.

Mr. Fenton offered an amendment giving the counties of Crawford and Chippewa one member of the assembly, and St. Croix and La Pointe one. He remarked that the argument of the gentleman from Calumet would apply with equal if not greater force to this case, and he hoped the convention would be as liberal to him as to that gentleman.

Mr. Dunn said he had voted for the amendment of the gentleman from Calumet from a conviction that each organized county should have at least one member of the legislature. If it had been judged wise and proper by the legislature that a county should be organized for the purposes of government, the inference was equally strong that it had such a separate and peculiar interest as entitled it to a representative. There were many questions which related to each county in its corporate capacity, which could be properly attended to only by a representative of that county and by one who had no divided interest. He agreed with the gentleman from Calumet that population should not be wholly the basis of representation. There were various reasons besides numbers which should influence in apportioning members. Putting together two or more counties to be represented by one member was itself an evil and should be avoided. Local jealousies might prevail, or local interests might be in conflict, and as the representative must come from one or the other he very naturally would be attached to the interests of his own county, and the other would feel that it was not represented. Counties should be represented, and they cannot be unless each has a representative of its own. As to the amendment of the gentleman from Crawford, he remarked that the county of St. Croix was duly organized and should have a representative. The county of La Pointe had no separate organization, but was attached to St. Croix, which was an additional reason for giving St. Croix a member. The same remark would apply to Chippewa and Crawford. Crawford was an old county and had been burdened with an attached county for years. He thought there was not a county in the territory better entitled to a representative of its own. The principle decided in the amendment of the gentleman from Calumet applied with double force to this case. It was only proposed to add one to the gross number of representatives, and he thought this amendment, while it did justice to the northwestern counties, would do no injustice to the others.

Mr. Fenton offered an amendment giving the counties of Crawford and Chipewew one member of the assembly, and St. Croix and La Pointe one. He remarked that the argument of the gentleman from Calumet would apply with equal if not greater force to this case, and he hoped the convention would be as liberal to him as to that gentleman.

Mr. Dunn said he had voted for the amendment of the gentleman from Calumet from a conviction that each organized county should have at least one member of the legislature. If it had been judged wise and proper by the legislature that a county should be organized for the purposes of government, the inference was equally strong that it had such a separate and peculiar interest as entitled it to a representative. There were many questions which related to each county in its corporate capacity, which could be properly attended to only by a representative of that county and by one who had no divided interest. He agreed with the gentleman from Calumet that population should not be wholly the basis of representation. There were various reasons besides numbers which should influence in apportioning members. Putting together two or more counties to be represented by one member was itself an evil and should be avoided. Local jealousies might prevail or local interests might be in conflict, and as the representative must come from one or the other he very naturally would be attached to the interests of his own county, and the other would feel that it was not represented. Counties should be represented, and they cannot be unless each has a representative of its own. As to the amendment of the gentleman from Crawford, he remarked that the county of St. Croix was duly organized and should have a representative. The county of La Pointe had no separate organization, but was attached to St. Croix which was an additional reason for giving St. Croix a member. The same remark would apply to Chipewew and Crawford. Crawford was an old county and had been burdened with an attached county for years. He thought there was not a county in the territory better entitled to a representative of its own. The principle decided in the amendment of the gentleman from Calumet applied with double force to this case. It was only proposed to add one to the gross number of representatives, and he thought this amendment, while it did justice to the northwestern counties, would do no injustice to the others.

Mr. Brownell said that if the principle of apportionment adopted by the committee were departed from in any case, it certainly should be in this. Crawford and St. Croix were distant from each other and had no interest in common, and a member from one of them would not be likely to be a true exponent of the wishes and feelings of the other. Moreover, frontier counties needed a larger representation to secure their rights. They are in process of formation and need more special legislation than older counties; and besides, being farther away, they are more apt to be neglected. The fact that St. Croix and La Pointe were unrepresented in any civil office, and that no census had ever been taken there, was good evidence of this. The population of St. Croix, he said, was not known. It was much larger than it was reported and was increasing very fast. This was a reason for giving them a larger representation than the committee had assigned them. He hoped the convention would exercise the same liberality towards these counties as they had towards Calumet and Manitowoc.

The amendment was adopted.

The committee then rose and by their chairman reported the same back to the convention with amendments.

The question being on concurring in the amendments of the committee, Mr. Whiton called for a division of the question.

The question having been put upon concurring in the first amendment of the committee, which was to strike out the twenty-sixth and twenty-seventh lines and insert the following: "The county of Calumet shall be entitled to elect one member of assembly. The county of Manitowoc shall be entitled to elect one member of assembly," it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 52, negative 8; for the vote see Appendix I, roll call 128].

The question was then put upon concurring in the second amendment of the committee, which was to strike out the twenty-ninth and thirtieth lines and insert the following: "The counties of Crawford and Chippewa shall be entitled to elect one member of assembly. The counties of St. Croix and La Pointe shall be entitled to elect one member of assembly," and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 52, negative 8; for the vote see Appendix I, roll call 129].

Mr. Castleman moved to amend the article by striking out in the twenty-fourth line the words "one senator" and inserting the words "two senators"; also, by striking out in the fiftieth line the word "five" and inserting the word "four."

He remarked that the object of the amendment was to increase the representation of Waukesha by giving her another senator and taking one from the number of representatives assigned to her. The fraction in Waukesha which was unrepresented was large at first, but by the addition of two members to the gross number it had been increased to over a thousand. The injustice of this was too great to be tolerated. The member of the assembly which they gave up could be assigned to some other county that required him.

Mr. Whiton spoke.

The question was then put on the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 39, negative 24; for the vote see Appendix I, roll call 130].

Mr. Turner moved to amend the article by striking out in the twenty-third line the word "one" and inserting the word "two"; also, by striking out in the forty-ninth line the word "five" and inserting the word "four." And the question having been put upon the adoption of the same, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 47, negative 17; for the vote see Appendix I, roll call 131].

Mr. McClellan moved to amend the article by striking out in the forty-fourth line the word "five" and inserting the word "six."

Mr. Chase hoped it would not pass; he thought we had gone too far already. He had hoped there would be no alteration except to give an increase to the sparsely settled counties, but he had foreseen the result if the apportionment were once broken in upon. He saw now no termination to the amendments. Every new one made the apportionment in regard to the other counties more and more unequal. If we passed this amendment, we must alter the apportionment in regard to all the other countries, and the result would be that the bill would have to be sent back to the committee and remodeled throughout. He thought we had better stop short.

Mr. Judd spoke.

Mr. Kinne said he did not desire that the report of the committee should be broken in upon. He had examined it carefully and he believed it was the fairest that could be proposed. A great deal had been said about inequality, but it was impossible to make the apportionment exactly equal unless a way could be found out of dividing three by two without a remainder. But as the report of the committee had been amended, giving an increase to Waukesha

and Washington and to the northwest counties, the inequality upon Walworth County had become too great to be borne. It was getting into difficulty, he was aware, to go further, but it was worse to stop here. The inequality was now greater in regard to Walworth and Racine than it was at first in regard to Waukesha. Since they had begun to innovate, it was now necessary to go on, or to go back to where we had started from.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 38, negative 24; for the vote see Appendix I, roll call 132].

Mr. Kinne moved to amend the article by striking out in the twenty-second line the word "one" and inserting the word "two"; also by striking out in the forty-eighth line the word "five" and inserting the word "four."

Mr. King was opposed to it. All the members allowed by the constitution had been apportioned already, and it was impossible to increase the number any further. Some explanation ensued, when

Mr. Estabrook called for a division of the question. The question was then put first on striking out "one" and inserting "two," and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 42, negative 20; for the vote see Appendix I, roll call 133].

Mr. Kinne then asked leave to withdraw the second division of the amendment.

Mr. Chase rose to a point of order. He wished to know if it was in order when a whole proposition had been submitted, which was afterwards divided, and the first part adopted in faith that the latter part would be, for the mover to withdraw the second part. The President thought it was in order. Mr. Kilbourn said it appeared to him that this was trifling. An amendment had been adopted in direct opposition to the provision of an article which we had already placed in the constitution and which was binding upon us till it was rescinded, in the same way as it would be upon the legislature hereafter. We had increased the number of senators to twenty-two, when the constitution prescribed that it should not exceed twenty-one. He thought that this addition to the constitution, being repugnant, was void. It was undignified and unmannerly, too. If the convention wanted to increase the number of the senate,

the direct and proper way would be first to change the article in the constitution so as to admit of it. Mr. Judd spoke.

Leave to withdraw was granted.

Mr. Larrabee moved to amend the article by striking out in the thirty-second line the word "five" and inserting the word "four"; also by striking out in the ninth line the word "one" and inserting "two." And a division of the question having been called for, the question was first put upon striking out "one" and inserting "two," and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 36, negative 27; for the vote see Appendix I, roll call 134].

Mr. Jackson moved that the article be recommitted to the committee with instruction to amend the same so that the number of representatives would not be more than 66 in the assembly nor more than 22 in the senate.

Mr. Sanders moved to amend the motion by instructing the committee to report the article as reported by the committee of the whole, which was accepted by Mr. Jackson as a modification of his motion. And the question having been put upon the motion to recommit, it was decided in the affirmative. And a division having been called for, there were 31 in the affirmative and 29 in the negative.

The convention then resolved itself into committee of the whole for the consideration of No. 7, article on the judiciary, Mr. King in the chair.

The article was read.

Mr. Kilbourn offered an amendment to the second section, to the effect that when county courts were created the jurisdiction of probate matters should be given up to them.

Mr. Kilbourn said he presumed the reason which had induced the judiciary committee to provide for the election of probate judges and not to establish a system of county courts, was that the latter would be expensive and burdensome upon the sparsely settled counties. The object of his amendment was to give the legislature power, when desired by any county, to erect county courts and give up the probate jurisdiction to them. There were some counties where this would be very convenient now. The county courts would do all minor business more expeditiously and with less expense than the circuit courts; and to make them also courts of probate would give a character and dignity to that branch which probate courts had not possessed before. It was a well known fact that probate courts had not received the attention heretofore which their importance demanded, and that probate judges had not always been the proper men for their station. The whole property of

the country had to pass through the probate courts at least as often as once in every generation, and it was important that they should be placed on a respectable footing.

Mr. Dunn said the amendment of the gentleman from Milwaukee had been suggested to him some days since, but he had not had an opportunity of consulting with the mover or with the gentlemen of the judiciary committee in regard to it. The article now provided that the legislature might create such inferior courts as they should deem necessary, and of course this gave them power to erect county courts. The amendment proposed to give the probate business up to the county courts, when established. It was true, he said, that the business of the probate was very extensive and important, and that it involved the most intricate questions in the law, and that it was therefore necessary that the office of probate judge should be well filled. It might be the intention of the gentleman from Milwaukee, by the creation of county courts invested with probate jurisdiction, to put probate business in better hands, but he could not see that that object would be attained in the way proposed. The judges of the county courts would be elected by the people, as well as the probate judges; and he could see no reason to suppose that better men would be elected to the former than to the latter. The county courts, however, would transact other business, and he agreed that, as this was to be so, it would be wise and prudent and economical to give up the probate business to them. He saw no objection to the amendment, and if it should meet the views of the rest of the committee he would not oppose it.

Mr. Whiton suggested an amendment to give the legislature power in their discretion to invest the inferior courts with probate jurisdiction. Mr. Kilbourn said he was not particular as to this. He only desired that the substance of his amendment might be preserved. The article as reported authorized the creation of inferior courts. His amendment provided that when such courts should be created, they should be invested with exclusive probate jurisdiction. If such an amendment were not adopted, as the probate courts were provided for in the constitution, the legislature could give inferior courts only concurrent, not exclusive, jurisdiction of probate business. The county courts should have exclusive jurisdiction, and then the probate courts might be abolished. His main object was to elevate the character of the probate courts and to have the busi-

ness done openly before the public. He accepted the amendment of the gentleman from Rock. Mr. Martin thought the amendment did not accomplish the intention of the mover. It would give only appellate jurisdiction to the county courts, which otherwise would belong to the circuit court. To accomplish the intention of the mover it should abolish the office of probate judge altogether. Mr. Whiton concurred. Mr. Kilbourn said he had prepared an amendment to another section, which he thought would obviate the difficulty mentioned by the gentleman from Brown.

Mr. Doran remarked that the only reason which had been urged against the establishment of county courts was that it would cause increased expense. But if the probate business were given up to them, the whole expense of the court would be little, if any, greater than that of the probate court alone. Thus the probate business would be better done, and all minor civil and criminal business very much facilitated. Competent men enough could be found to fill the office of judge in these courts. As to the salary, that might be left to the county commissioners, to be regulated by the amount of business to be done, and a tax might be imposed upon the business in such a way as to pay the whole or nearly the whole of the expense.

Mr. Martin offered an amendment to section 14, giving the legislature power to confer probate jurisdiction upon county courts in their discretion. Mr. Kilbourn said it was the same in substance as his. Mr. Martin withdrew it.

Mr. Estabrook preferred the suggestion of the gentleman from Milwaukee (Mr. Doran). He would like to see the idea in the second section enlarged upon. He would like to see the jurisdiction of the county courts enlarged and the probate jurisdiction given up to them. It had been suggested that this would not operate well in the sparsely settled counties. He did not think so, but if gentlemen who represented those counties thought so, let them say it. For his part, he preferred to have the probate court abolished as a separate court and the duties attached to county courts. Mr. Doran said the objection to the amendment proposed by his colleague was that it required the legislature to confer the probate business upon the municipal courts. Now if more than one court of the kind were erected in a county, there was no way of determining which should have the probate jurisdiction; in fact, both must have it, and this must create confusion.

Mr. Kilbourn's amendment was not adopted. Mr. Martin offered the amendment he had before proposed.

Mr. Doran said he had received many letters on this subject since he had been here, and they expressed a general desire for the erection of county courts with criminal and probate jurisdiction. He thought it the duty of the convention to provide for them absolutely—not leave it discretionary with the legislature to do it or not. Otherwise it might not be done; the legislature might say the constitution had established all the courts which were necessary. He would submit a proposition giving jurisdiction to the county court in cases where less than \$2,000 was involved, and in criminal and probate cases. This would make the county court respectable and permanent; and the probate business would be done openly. He merely suggested it now.

Mr. Martin's amendment was not adopted.

Mr. Doran offered an amendment to section 2, to strike out in the second line the words "probate courts" and insert "county courts with probate jurisdiction." Mr. Whiton opposed it. Mr. Dunn said the amendment of the gentleman from Milwaukee (Mr. Doran) struck at the very object which the judiciary committee had proposed to themselves. They had desired to establish a system which should be cheap, simple, and adequate to the present wants of the people, leaving it to future legislatures to make such further additions as the increase of business and the density of population might make expedient. They had done so. They had thought that county courts were not needed now, and so had merely provided for creating them hereafter. Gentlemen of experience, acquainted with the wants of the territory, could see no necessity for establishing county courts now. They must see, he thought, that the system proposed was adequate to all present wants.

Mr. Chase remarked that it had been said that government was a necessary evil. He believed it, and he thought it applied with especial force to the judiciary. He therefore hoped that, to make the evil as light as possible, cheapness and facility of doing business would be chiefly regarded. If the amendment was calculated to increase officers or the expense or difficulty of obtaining justice, he would be opposed to it. He understood that it would have this effect, and he could not favor it. He thought that the less law the better.

Mr. Doran said that the expense of county courts had been dwelt upon largely, but nothing had been said about the expense of probate courts. The expense of the latter alone would be nearly or quite as great as of the county courts with probate jurisdiction; and a tax could be imposed from suitors in it which would be sufficient to pay the expense and which it would still be for the interest of the suitors to pay. Why drive suitors in every small matter to the circuit court, with its interminable delays and proportionate fees, when justice might be done them, as it were, at their own doors by the county courts? He would say, as he had said before, that the expense could be no objection to this proposition. If gentlemen had any valid reasons for opposing it, they had not yet brought them forward.

Mr. Estabrook said that it must be evident that this plan would not cause any additional expense, but that it would be every way convenient. It was well known that the judge of probate was now required to hold a court at the county seat at least once a month, and that there must be one in each county, no matter how small. The plan proposed would do all this away. Among the conveniences of it which would strike every practitioner was this, that the granting of all remedial writs, the allowing of orders, certificates, etc., would be done by the county court, which would always be convenient and accessible; whereas the circuit judge might be far away when most wanted.

Mr. Judd spoke, alleging that the system would be very expensive. Mr. Estabrook inquired what those expenses were to be. Were they not the necessary expenses of the litigating parties? And if not paid here, would they not be paid in some other court? And would they not be as small, and smaller, in this court than in any other? He thought the gentleman had been led astray by the fact that the expenses of the courts had been paid heretofore by the United States, but they must now under any system be paid by the people.

Mr. Doran said he admitted he had not had as much experience in courts as the gentleman from Dodge, but yet he had had some. He would inform him that in the city of Milwaukee there was a municipal court somewhat of the kind proposed, which actually paid a revenue to the city above all its expenses. Perhaps such courts would not do so in all the counties, but he thought it safe to say

that in at least one-half the counties the income would more than pay the expenses. The gentleman omitted any mention of the expense of the organization of circuit courts. It was necessary to keep a large number of jurors in waiting in them as in county courts. The objection on the ground of expense, then, had no weight. There would be an actual saving, as had been sufficiently shown.

Mr. Dunn remarked that the argument of the gentleman from Dodge, drawn from the increased expense, had some weight. Gentlemen seemed not to have noted that the judge of probate received his compensation from fees, not from the county or state treasury. It was no expense to the people at large. If a separate county court were to be organized, on what plan should it be? Should the judge be a salaried officer? He should. Such had always been the case, and there was propriety in it. This, then, would be an additional expense to the people.

The committee in devising the plan they had submitted had had a distinguished example before them in the Constitution of the United States. The framers of that instrument had organized only such courts as were absolutely necessary, and left the door open for Congress to establish others when the wants of the country required. There was also good reason for this course, for they could not know in advance what wants might arise; nor could we. It was policy, then, to do as they had done, not to fix courts at random for all time to come.

Mr. Kilbourn said he could not entirely agree with the gentleman from Dodge or the gentleman from Lafayette. The gentleman from Lafayette said it was a new proposition to allow a court to support itself by its fees. He had supposed it might be proper for a county court to tax suits to pay its expenses, as those expenses would be in proportion to the amount of business. At any rate fees were now so charged for probate business. But the bill itself indicated a way to pay these salaries, if they must have salaries. The only imperfection in it was that it required the money to be paid into the treasury of the state instead of into that of the county. This fund would be a very proper one for the support of county courts. In Milwaukee, as had been said, the municipal court was a source of revenue. The gentleman from Dodge had greatly overestimated the expense of county courts. There were not expensive courts. Business was done in them far more cheaply and

quickly than in circuit courts. But if the committee had reported differently in another respect, the provision for county courts would not have been as essential as now. They had given power to erect inferior courts, but had given no power to abolish the probate courts. It was probable, for this reason, that the legislature would not erect any county courts. As the bill now stood they would be superfluous, for the probate courts would be in existence still. In the other way they might have been a source of revenue. His amendment, which had been rejected—improperly, he thought—provided for this.

Mr. Richardson said he would not attempt to argue the question, but he thought the gentleman from Milwaukee was mistaken as to the power of establishing county courts. The power was given to the legislature as the bill now stood to erect county courts; and counties could have them that wished; and those that did not desire them were not obliged to be burdened with them. If the amendment of the gentleman from Brown had been adopted, there would not have been two courts at once with the same jurisdiction. That amendment could be adopted in convention and obviate all difficulty.

Mr. Chase hoped the gentleman from Milwaukee would consider that we were forming a constitution for the whole territory—not for Milwaukee only. Milwaukee might need a county court and find it a source of revenue, but Fond du Lac would not, nor did he think any other county would. He hoped we should not provide courts for the whole territory not wanted now.

Mr. Lovell said that when the amendment of the gentleman from Milwaukee (Mr. Kilbourn) was before the convention he had hoped it would be adopted because it would do away with the necessity for that of his colleague (Mr. Doran). It was obvious that the former would have been beneficial in joining two officers and thus providing a better probate judge as well as county courts. The objection to the proposition now under consideration was that it provided for both county and probate judges. The judicial force as provided in the article at first was useful and would be for a number of years for all the counties except Milwaukee. The provision for municipal courts was ample for all the wants of Milwaukee. He was opposed to organizing by the constitution courts which were not wanted. It was the organization of courts, not the amount of business done, that was expensive. He had heard of a man that had two cats, a large and a small one, who cut two holes through his door, a large

and a small one, to let them out and in. This proposition of two courts for the same purpose was as absurd.— He was opposed to making courts for the purpose of making officers. Give judges as much as they could do—work them hard, and pay them well—and the business would be better done than if divided among many. The office of judge was one of service and required practice. If inferior courts were erected, they would have inferior judges, small salaries, and little business to do, and that little would be ill done. He was opposed to their creation.

Mr. Doran said he could not help expressing his surprise that gentlemen would still object to this amendment on the ground of expense after it had been proved to a demonstration that no additional expense need be incurred; but that on the contrary, everything considered, there would be an evident saving of expense. No less extraordinary was the proposition that new officers were to be created, when no such thing was contemplated. It was understood and conceded on all hands that we were to have probate judges and we already have clerks of county commissioners. Now where will be the necessity for creating new officers if you give this probate judge a limited jurisdiction in civil cases and have the clerk of the board of county commissioners act as clerk of that court? By changing the name of the court you do not establish a new officer. You will have but one judge and one clerk; you have the same now. If there will be no business, there will be no expense. If there should be business, let the suitors pay all the expense and a further tax if you will, to go into the county treasury, and this will be only carrying out the principle now about to be recognized by the article, which provides that suitors in the district court shall be taxed in each case, such tax to be applied towards paying the salary of the judge. This will be much preferable to having parties wait for the district courts, wherein it generally takes eighteen months to bring a suit to maturity; and then if taken to the supreme court, to wait another year for a final hearing. The honorable gentleman from Lafayette (Judge Dunn) says that if any change should be made it ought to be left to the legislature, and in support of this refers to the Constitution of the United States and shows the provision—the wise provision—therein for a Supreme Court and such inferior courts as the Congress might ordain. But the gentleman seemed to overlook the fact that this judge of probate would for all time be

an obstacle in the way of the establishment of county courts. The multiplicity of courts would be an objection and under this article, if adopted as it stands, the judge of probate should remain as long as the constitution would last. But he (Mr. Doran) considered the gentleman unhappy in his reference to that part of the Constitution of the United States which of all others has been the subject of the greatest diversity of opinion among the ablest men of the Union and at one time threatened its dismemberment. When during the administration of the elder Adams a judiciary bill was matured providing for a separate Supreme Court, and in 1801 became a law, the ruthless hand of party faction the following year on the accession of Mr. Jefferson to the presidency demolished this truthful fabric of a judicial system; and then arose the question whether Congress had the power to legislate out of office the judges who had been created the year previous and on which the Senate was divided as equally as could be, the casting vote of the vice-president deciding in the affirmative. In the constitution he considered everything ought to be made so clear as to be beyond doubt, hence one reason for his desire that county courts should be established with probate jurisdiction. He (Mr. Doran) referred to many instances that had occurred in Michigan under the system of doing probate business as now established in this territory from which it was manifest that reform was necessary, and that there was no way to effect this but by giving the probate judge jurisdiction in civil cases and having the probate business done in open court before the public and the bar.

The question was then taken on the amendment and it was lost.

The committee then rose and by their chairman reported that they had made some progress therein and asked leave to sit again. Leave was granted.

On motion of Mr. Vanderpoel the convention adjourned.

WEDNESDAY, JANUARY 19, 1848

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read and corrected.

Petitions on the subject of homestead exemption were presented and referred to the committee of the whole, as follows: by Mr. Ward, from inhabitants of Iowa County; by Mr. Beall, from inhabitants of Marquette and Rock counties.

Mr. Castleman presented a remonstrance from the inhabitants of Marquette County on the same subject, which was referred to the same committee.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 17, article on education and school funds.

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, made the following report, to wit:

"The committee to whom was referred the apportionment of representatives with instructions to strike out the words 'The counties of Calumet and Manitowoc shall be entitled to elect one member of assembly' and insert 'The county of Calumet shall be entitled [to elect] one member of assembly. The county of Manitowoc shall be entitled to elect one member of assembly'; also, to strike out 'The counties of Crawford, Chippewa, St. Croix, and La Pointe shall be entitled to elect one member of assembly' and insert 'The counties of Crawford and Chippewa shall be entitled to elect one member of assembly. The counties of St. Croix and La Pointe shall be entitled to elect one member of assembly,' respectfully report the same back to the convention with the amendments which they were instructed to make.

F. S. LOVELL, Chairman"

Resolution No. 1, introduced by Mr. Reed yesterday, was then taken up. Mr. Chase moved that the same be referred to the committee of the whole and ordered printed.

Mr. Reed said that the main principle involved in the resolutions—that of preëmption—was one generally adopted by the Democratic party and by all parties. It had been recommended to be carried out to its fullest extent by the President in his recent message. It was a principle which no gentleman of either party on that floor would controvert. By the act of donation the minimum price on these reserved lands had been fixed at \$2.50 per acre, with no provision for preëmption. In the counties of Marquette and Winnebago a large portion of the public land was thus thrown out of market. This was hostile to the interests of the territory and operated very injuriously on those who had gone to settle in those counties, whose interests required that these lands should be open to preëmption and that their minimum value should be fixed at \$1.25 per acre. The lands thus reserved were no more valuable

than any other lands. They were all agricultural in their character. The operation of the present system was to keep these lands out of the market and throw upon the actual settlers on the other lands in the counties the entire expense of the government. Mr. Reed said that he felt in view of these circumstances that it was due to those who were thus situated and to those who might come afterwards into those counties that some action should be had on the subject. The object in bringing the matter before the convention was to lay it before Congress at as early a period as was practicable. It was not supposed that the action of the convention could secure the rights which were desired; it was merely an ordinary measure to obtain the action of Congress. He had not supposed the subject was one that was new to any members on that floor, nor did he deem that it was necessary to refer the resolutions to the committee of the whole.

Mr. Chase said he was sorry that the gentleman from Winnebago had conceived it to be necessary to debate the question on its merits, on a motion to refer it to the committee of the whole. He was as well satisfied as the gentleman himself could be with the general principles of the resolutions. In order to perfect them, however, he thought that one or two amendments would be necessary, and it was with a view to making such amendments that he had moved their reference to the committee.

The question was taken on the motion and was decided in the affirmative. Resolution No. 2, introduced by Mr. Lakin yesterday, was then taken up.

Mr. Chase was opposed to the passage of the resolution. When the members had finished the business on which they were engaged, it would be time enough to adjourn. The last convention had occupied two weeks of their time in the early part of the session in discussing motions and resolutions fixing the time of adjournment.

Mr. Lakin did not wish to take up the time of the convention in discussing this point. He thought every member must see the advantage of limiting the adjournment to some particular time. Gentlemen could now see their way through their business. They had already been in session as long as their constituents thought they ought to be. He was among those who wished to close up the business of the convention and thought they could easily do so in a week from this time.

Mr. Judd moved to lay the same upon the table. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 36, negative 26; for the vote see Appendix I, roll call 135].

Resolution No. 3, introduced by Mr. Carter yesterday, was then taken up. Mr. Case moved that the same be referred to the committee on incidental expenses, which was disagreed to. Mr. Case moved that the resolution be referred to a select committee of five, which was agreed to.

Resolution No. 4, introduced by Mr. Foot yesterday, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

Resolution No. 5, introduced by Mr. Chase yesterday, was then taken up. And the question having been put on the adoption of the same, it was decided in the affirmative.

Resolution No. 6, introduced by Mr. Lewis yesterday, was taken up. And the question having been put on the adoption of the same, it was decided in the negative. And a division having been called for, there were 17 in the affirmative and 25 in the negative.

Resolution No. 7, introduced by Mr. Sanders [yesterday,] was then taken up, when Mr. Gifford moved that the same be laid upon the table, which was agreed to.

No. 17, article on education and school funds, was taken up. Mr. Lovell asked and obtained the unanimous consent of the convention to amend the article by striking out the word "county" wherever it occurs before the word "academies." The question was then put on the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 52, negative 12; for the vote see Appendix I, roll call 136].

No. 18, article on apportionment of representatives, was then taken up. And the question having been put on concurring in the report of the committee, it was decided in the affirmative.

Mr. Case moved that the article be recommitted to the committee with instructions to amend the twenty-fourth line by striking out the words "one senator" and inserting the words "two senators"; also, by striking out in the fiftieth line the word "five" and inserting "four." The President decided said motion to be out of order. Mr. Kilbourn took an appeal from the decision of the Chair.

The President said that the amendment was identical with one which had been offered yesterday and which had been virtually rejected by the convention. Mr. Case said that if the decision of the Chair was sustained, the friends of the amendment would have no remedy except to recommit the article. He therefore moved to recommit, with instructions to insert the amendment. Mr. Lovell thought that it could not be in order to recommit the article with instructions to the committee to do what the convention had already

by a vote refused to do. Mr. Chase called for a division of the question—first as to recommitment, and next as to instructions. Mr. Judd made some remarks. The President said that the motion to divide the question was not in order.

Mr. Kilbourn spoke in reply to Mr. Judd. He was glad that the gentleman from Dodge had admitted that injustice had been done in the apportionment to the county of Waukesha. That gentleman had admitted that the county was entitled (to use his own language) to nine units of representation. Yet by his computation it would have only eight: five representatives and three senators. It was entitled to one more. The question was whether this additional representative, very slightly overrepresenting the county, should be allowed to it, or a large fraction should go unrepresented. The county of Waukesha stood in a kind of transition state in reference to the two counties of Racine and Walworth. It had a larger population than Walworth, but the same representation. It had two units less than Racine. Why should not that county, occupying a middle ground between the two others in reference to population, occupy a similar position in respect to representation? He did not contend for more for that county than he would for any other. He had no particular interests at stake in it.

Mr. Estabrook took up the question in a humorous light and said he would not be prepared to vote for the motion until he had had an opportunity of seeing other members and logrolling with them a little on the subject. Mr. Chase said he was not willing to logroll with gentlemen. He was in favor of the principle that every tub should stand on its own bottom. Mr. Castleman, as one of the delegates from Waukesha County, would say that he would join with no member in logrolling. He asked the apportionment of an additional senator to his county, as a matter of right and justice. The simple rule by which to arrive at the facts of the case was to divide 210,000, the population of the territory, by 76, the number of representatives. That gives 3,181 as the ratio of representation. And five members on that basis would assume the population of the county of Waukesha to be 15,900, which was within 34 of its actual population. That county was precisely represented in the house. In the senate the ratio of representation was 11,800. If any gentleman could show that by the present apportionment Waukesha would not be short in her representation in the senate to the amount of

by a vote refused to do. Mr. Chase called for a division of the question—first as to recommitment, and next as to instructions. Mr. Ladd made some remarks. The President said that the motion to divide the question was not in order.

Mr. Kibbourn spoke in reply to Mr. Ladd. He was glad that the gentleman from Dodge had admitted that injustice had been done in the apportionment to the county of Washkesh. That gentleman had admitted that the county was entitled (to use his own language) to nine units of representation. Yet by his computation it would have only eight: five representatives and three senators. It was entitled to one more. The question was whether this additional representative, very slightly overrepresenting the county, should be allowed to it, or a large fraction should go unrepresented. The county of Washkesh stood in a kind of transition state in reference to the two counties of Racine and Walworth. It had a larger population than Walworth, but the same representation. It had two units less than Racine. Why should not that county occupy a middle ground between the two others in reference to population, occupy a similar position in respect to representation? He did not contend for more for that county than he would for any other. He had no particular interests at stake in it.

Mr. Estabrook took up the question in a humorous light and said he would not be prepared to vote for the motion until he had had an opportunity of seeing other members and juggling with them a little on the subject. Mr. Chase said he was not willing to juggle with gentlemen. He was in favor of the principle that every man should stand on his own bottom. Mr. Castelman, as one of the delegates from Washkesh County, would say that he would join with no member in juggling. He asked the apportionment of an additional senator to his county, as a matter of right and justice. The simple rule by which to arrive at the facts of the case was to divide 310,000, the population of the territory, by 16, the number of representatives. That gives 8,181 as the ratio of representation. And five members on that basis would assume the population of the county of Washkesh to be 15,900, which was within 34 of its actual population. That county was precisely represented in the house. In the senate the ratio of representation was 11,800. If any gentleman could show that by the present apportionment Washkesh would not be short in her representation in the senate to the amount of

full 5,000, it must be by some arithmetic which he did not understand. There was no way of getting round the fact.

Mr. Judd spoke.

The President stated that on further reflection he was of the opinion that the motion to recommit with instructions was not in order. It was in order yesterday to move to amend the report of the committee, but that had not been done. The object of the gentleman from Waukesha (Mr. Case) could be reached only by a motion to reconsider. Mr. Kilbourn said the Chair had admitted that if the amendment had been offered yesterday it would have been in order. He could not see that the rights of those friendly to the amendment should be barred by the lapse of a day. The amendments were all separate propositions, and it was clearly competent for the convention to act on one of them without acting on the others. He could not see how the decision of the Chair could be maintained by any parliamentary law or the rules of the convention. Mr. Lovell supported the decision of the Chair. The convention having once rejected the proposed amendment, it was manifestly out of order at this stage of proceedings to move to insert it again. He concluded by moving a call of the convention. Mr. Chase said if it was in order to move to recommit with instructions, of course it would be so to move to recommit without them. He believed the decision of the Chair to be perfectly correct. Mr. Sanders said that the article was in exactly the same position now as when the amendment was originally offered and lost. He hoped the decision of the Chair would be sustained and believed it to be perfectly right.

Mr. Judd made some remarks.

Mr. Lovell moved a call of the convention, which was ordered, and Messrs. Colley, Crandall, O'Connor, Prentiss, Rountree, and Ward reported absent. Mr. Beall moved that all further proceedings under the call be dispensed with, which was agreed to.

Mr. Kilbourn said the question before the convention was one of considerable importance, as it was to establish a rule of practice and, if the decision of the Chair should be sustained, one entirely different from what had been their previous practice. There had been no expression of opinion on the part of the convention in reference to the amendment. It had merely fallen by recommitment. No rule should be so construed as to take away from a deliberative body the power of deciding a question on its merits.

full \$5,000, it must be by some arithmetic which he did not understand. There was no way of getting round the fact.

Mr. Judd spoke.

The President stated that on further reflection he was of the opinion that the motion to recommend with instructions was not in order. It was in order yesterday to move to amend the report of the committee, but that had not been done. The object of the gentleman from Waukesha (Mr. Chase) could be reached only by a motion to reconsider. Mr. Kibbourn said the Chair had admitted that if the amendment had been offered yesterday it would have been in order. He could not see that the rights of those friendly to the amendment should be barred by the lapse of a day. The amendments were all separate propositions, and it was clearly competent for the convention to act on one of them without acting on the others. He could not see how the decision of the Chair could be maintained by any parliamentary law or the rules of the convention. Mr. Lovell supported the decision of the Chair. The convention having once rejected the proposed amendment, it was manifestly out of order at this stage of proceedings to move to insert it again. He concluded by moving a call of the convention. Mr. Chase said if it was in order to move to reconsider with instructions, of course it would be so to move to reconsider without them. He believed the decision of the Chair to be perfectly correct. Mr. Sanders said that the article was in exactly the same position now as when the amendment was originally offered and lost. He hoped the decision of the Chair would be sustained and believed it to be perfectly right.

Mr. Judd made some remarks.

Mr. Lovell moved a call of the convention, which was sustained. Mr. Sanders, Mr. O'Connor, Mr. Kibbourn, and Mr. Chase were absent. Mr. Judd moved that all further proceedings under the call be deferred until which was agreed to.

Mr. Kibbourn said the question before the convention was one of considerable importance, as it was to establish a rule of practice, and if the decision of the Chair should be sustained, one entirely different from what had been their previous practice. There had been no expression of opinion on the part of the convention in reference to the amendment. It had merely fallen by recommendation. No rule should be so construed as to take away from a deliberative body the power of deciding a question on its merits.

Mr. Judd made a few remarks.

The President stated that he could not lose sight of the proceedings of the convention in reference to the amendment yesterday. The proposition to amend, as was now suggested by Mr. Case, was then adopted. The convention then made an order that the article should be recommitted with instructions to the committee to confine themselves to the amendments of the committee of the whole. If it was in order to move to recommit, it would be in order to move the same identical proposition a dozen times over. There would be no end or limitation to the difficulty which might ensue.

The question was then put: "Shall the decision of the President stand as the decision of the convention?" and it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 56, negative 9; for the vote see Appendix I, roll call 137].

Mr. Kilbourn moved to amend the article by adding a new section, as follows: "Section — In laying off single districts for election purposes no county shall be subdivided when such subdivision is opposed to the wishes of the people thereof as made known through the delegates or representatives of such county."

Mr. Kilbourn said that this single district system, so far as it went to cut up counties, was unacceptable to a large number of the people. If he acted on his conviction of what was best, he would go against the system so far as dividing counties was concerned. Several eastern counties were in favor of the plan of division, and he himself came here under instructions to that effect. Hence his vote when the subject was first before the convention. He thought the people of each county should have an opportunity of expressing their views on the subject and choosing such a plan as they themselves preferred.

Mr. Chase inquired whether it was in order to move the reference of the article to the committee of the whole. The President said it was.

Mr. Case moved that the article be recommitted to the committee of the whole. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 27, negative 40; for the vote see Appendix I, roll call 138].

Mr. Dunn hoped the amendment might prevail. He was not in his seat when the article passed. He did not think the principle of cutting up counties would work well. He had heard the argument adduced by those who were in favor of districting the counties, that it would allay sectional feelings and differences. He drew an entirely different conclusion on this point. The moment they began to draw lines and district counties, they would see sectional differences start up on every side. This system of dividing counties would open a door for gerrymandering which ought to be kept closed. It would be infinitely more satisfactory to give the people of each county the opportunity of settling this matter to suit themselves. If the system of dividing counties was persisted in, each district would of course elect its own representative; and the representatives so elected would hardly feel the same interest in the welfare of the whole county that they would in their particular districts. He could not see that the system possessed the advantages which its friends claimed for it. It would be necessary of course to form senate districts, but it was not necessary to make such a provision with reference to the house of representatives. The amendment of Mr. Kilbourn merely left the matter open to the people; and if they liked the system, he for one had nothing to say against it.

Mr. Sanders hoped the amendment would prevail. He was in favor of the single district system but not of dividing counties. There was an impracticability about the matter. He did not come to the convention instructed to go for any such project. He had received many letters from his constituents on this matter, and all of them had united in the opinion that it was not the business of the convention to district the counties but that they should throw that matter back on the legislature, where it properly belonged. In New York this matter had been left in the hands of the supervisors. The convention were not competent to do it, and it was not their business. If they undertook it, they would find themselves involved in an interminable difficulty from which they would find it impossible to extricate themselves. In the case of the county of Racine they could not divide that county into five districts without cutting up the senate districts. They would find great difficulty, too, in such counties as Sheboygan, where separate towns were not particularly set off. How could any gentleman on that floor feel competent to step in where a delegation from a county might be divided

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on the subject of districting and by his vote decide the question for them?

Mr. Judd spoke in opposition to the amendment.

[Mr. Judd was most emphatically opposed to the amendment. If we declare in favor of the single district system at all, we should not make exceptions of some counties, but make it general. And why seek to evade it by cutting up some counties and not others? It would be unfair and unjust. For his part, he was not very particular whether the system was adopted or not; he had supported it and he believed a vast majority of the people were in favor of the single district system. He thought this body was better calculated to divide the state into districts than the legislature can be, as every county has a larger representation here than it will have in the legislature; that the census was fresh before them. He thought they were sent here for the purpose of establishing how the legislature shall be elected, and then carrying out the principle. He could never vote for the proposition; if it is proper that the single district system be adopted at all, let us carry it out in full.—*Tri-Weekly Express*, Jan. 20, 1848.]

Mr. Chase said that he had always found that whenever a party traveled out of the road of principle for the sake of acting in reference to expediency they always got into difficulties. The single district system was the correct one, and he hoped the amendment would not prevail. So far as mere expediency was concerned the single district system would not work well in his own county. Under the present system they could elect an entire Democratic delegation; but probably under the single district system they would send one Whig. Still he was not to be influenced to sacrifice the single district system by any such consideration. He would adhere to principle and not sacrifice it to expediency.

Mr. Beall spoke.

[Mr. Beall differed with his colleague in reference to his own county, as he believed it was sure to elect Democrats whether by single districts or otherwise. He thought it might possibly operate injuriously in some counties. But the principle would have to come sometime and it might as well come now, and it must be adopted in full or not at all. He hoped the proposition of the gentleman from Milwaukee would not prevail.—*Tri-Weekly Express*, Jan. 20, 1848.]

band and throwing them down with the other. He had heard no substantial argument advanced against the single district system.

Mr. Castleman regretted to be obliged to differ from his particular friends on this subject. The matter resolved itself into a question of district or no district. If the whole question were left open to the counties, political parties would adopt it and throw it aside from time to time as mere party expediency should for the moment dictate. It would be made a party measure wherever it was tried. The adoption of the amendment would be virtually a defeat of the proposition which had already met with the approval of the convention.

Mr. King hoped that the convention would not now abandon by an indirect vote what they had twice determined on by a direct one. The argument of the gentleman from Lafayette (Mr. Dunn), if good at all, was as good against the whole system of single districts. He did not believe that any difficulty would be found in districting by the convention.

Mr. Kilbourn said that he did not know that it was necessary for him to disclaim being actuated by any mere party views in the course which he had taken on this question. He would, however, disclaim any such motives. He knew that there were many gentlemen on that floor who were opposed to cutting up the counties, and he believed that they fairly represented the views of their constituents. He had voted for the system under the force of instructions, but believed it to be a bad one. However, he did not consider his instructions as extending beyond Milwaukee County. The views of the people of Grant County, for instance, might very probably differ entirely from those of the citizens of Milwaukee County. The latter ought not, in that case, to insist that the former should be cut up into single districts. He held that each county should be left to itself in this matter. He thought this proposition was calculated to do justice to all the counties severally. Nor could he see how it was inconsistent or out of place, as had been charged by the gentleman from Dodge (Mr. Judd). If it was out of place, however, the committee of revision could easily put it in a proper place. It might be introduced as an amendment qualifying section 4 of the legislative article.

Mr. Lakin said that he had long ceased to be surprised at anything; he had seen too much of politicians arguing on one side of a question and acting on the other—building up schemes with one hand and throwing them down with the other. He had heard no substantial argument advanced against the single district system.

He thought that one strong argument in its favor was that it would promote harmony. All knew that much difficulty arose prior to elections in selecting candidates. By adopting this system the first and most difficult question would be decided, viz., from what sections of the county to select the candidates. It would define rights and remove all bones of contention, harmonizing matters from the beginning. A county might be regarded in the light of a family, wherein it was necessary that individual rights should be defined and no difficulty left for the head of the family to settle. If peace was the object to be secured, by all means adopt the single district system. If this principle was not correct, why adopt it in electing members of Congress? If it was right in that case, it was equally applicable to the election of members of the state legislature. The system of single districts was in accordance with the purest principles of democracy. Had not a minority rights, and rights which ought to be respected? Could the majority do no wrong? I claim that it does not follow because there is a small majority on one side that the other shall have no rights.

Mr. Lakin said that he did not know whether his constituents were in favor of the measure or not. He acted on his own views of right and wrong, and though Grant County might lose by the adoption of the system, believing it to be right, he would go in for it. There was some force in the argument of uniformity. He did not believe in one county being governed by one system and another by a different one. He wished to see an article on this subject adopted which should be general and universal in its operation. It had given him great pleasure to hear so many gentlemen on that floor declare themselves in favor of a proposition which he regarded as so perfectly just in itself.

Pending the question on the amendment of Mr. Kilbourn, Mr. Doran moved that the convention take a recess until half past two o'clock P.M., which was agreed to.

HALF PAST TWO O'CLOCK P.M.

The question pending being on the amendment of Mr. Kilbourn to No. 18, article on apportionment of representatives,

Mr. Doran said that pending the collection of the house he would say a few words. It seemed to be involved in a cloud and was not

yet fully determined what was Democracy. Some said it was opposition to banks, some that it was opposition to the single district system. Without pretending to decide the question for others, he felt bound for himself to oppose the amendment now before the convention. When he was nominated for a seat in that body, his constituents had required of him and other candidates their views on the single district system. He had declared himself in favor of it. They opposed it, and he now felt bound to carry out what he considered his pledge to them. He thought there was every reason for a Democrat to go for a single district system. He could not appreciate the objection spoken of by the gentleman from Lafayette, as to the danger of gerrymandering. The districting would be in the hands of the county itself, by its representatives—so the amendment contemplated—and he could not believe but that the rights and interests of the people of Grant County would be safe in the hands of their representatives now on this floor, or of any subsequent delegation from there in the legislature. The argument of the gentleman, if it had any validity, was against the principle itself, not its incidental difficulties. The system brings home the representative to his constituents and requires him to be chosen by those who are best acquainted with him. It was this that the gentleman feared; there was nothing to be feared but this. As to the difficulty which the gentleman from Racine (Mr. Sanders) saw in districting his county, his colleagues did not agree with him as to the existence of any such difficulty, and he believed they were fully competent to district it so as to do justice to all and every part. It was a blow at the system itself, made in this form for greater effect—for what political ends the gentleman himself best knew. He was surprised to see the question debated now, when the people had generally decided on it.

Mr. Sanders said he had not spoken of an absolute difficulty existing in the Racine delegation. He had only put a case, and he would put it again, that the gentleman might fully understand it. By the apportionment adopted, Racine County would receive two senators and five members of assembly. Suppose the Racine delegation in the convention were divided four to four as to the proper method of districting the county, and could not agree. How could the question be decided, and still their rights be preserved? Would the gentlemen from the north, south, and west—from St. Croix, or Grant, or Green—who knew nothing about the situation of the

county or its local interests, want to step in and decide these questions for us? Would it be proper that they should do so? It was impracticable to do justice in this way. He was surprised to see the gentleman charge that his opposition to the scheme was for political ends. That gentleman probably felt the shoe pinch his own heel, as he was so prompt to mention it. For himself, he disclaimed it. It was well known that Racine was largely Democratic, and he did not believe that gerrymandering could have much effect in changing the character of its representation. But there were difficulties in districting Racine, and his colleagues saw them. The difficulties were these: No assembly district was allowed to be divided in forming a senatorial district; consequently, as they would have two senators and five representatives, one senator must be elected by two assembly districts, and the other by three. This made it almost impossible for the Racine delegation to agree upon the method of districting. The interests of different sections were diverse. Moreover, their delegates in this convention were not sent here to district the county. They were instructed to go for the single district system, but this was quite another thing. He was in favor of providing in the constitution for the single district system, and leaving it to the legislature to arrange the details. This was what the people intended and desired. Gentlemen might talk about Democracy, but he believed it was Democratic to represent his constituents—to do what they had sent him for, and nothing more. He did not believe any gentleman here came instructed how to district his county. The plan proposed was a trap sprung upon them for political purposes, and he hoped it would be rejected.

The question was then taken on the adoption of the amendment, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 12, negative 54; for the vote see Appendix I, roll call 139].

Mr. Case moved a reconsideration of the vote taken this morning on concurring in the report of the committee on No. 18, article on apportionment of representatives.

He said his object was to get a fair vote in relation to the claims of Waukesha County; and then if his claims were voted down he would be satisfied. He was aware that the proper time to make his claim would have been when the question was on the recommitment, but he was under a misapprehension at the time in

relation to the instructions with which it had been recommitted. He now desired a reconsideration, that the claim of Waukesha might be presented fairly.

Mr. Whiton spoke.

[Mr. Whiton said he hoped the motion would prevail, not that he would vote for the proposition which the gentleman from Waukesha proposed to make, but that he wished to record his vote against the amendments of the committee. He was opposed to adding a member to the counties of Calumet and Manitowoc, when the two counties together had but about two-thirds the population that entitles them to one member. He could see no propriety or justice in this addition.—*Tri-Weekly Express*, Jan. 20, 1848.]

Mr. Lakin was in favor of reconsidering. He thought it was wrong to depart from the premises laid down as the basis of apportionment. What was the proper basis of representation, he inquired. Population, and population only. The doctrine of property qualification had been exploded long since. Counties, then, should be represented according to their population— not by the dignity of county organization or the property they contained. If this were the correct principle, then the amendments adopted were wrong, as they gave representatives to counties not entitled to them by population.

Mr. Sanders moved a call of the convention, which was ordered, and Messrs. O. Cole, Colley, Fox, and Mulford reported as absent.

Mr. Harvey moved that Mr. Colley be excused from his attendance, which was agreed to. Mr. A. G. Cole moved that Mr. Mulford be excused from his attendance, which was agreed to. Mr. Richardson moved that all further proceedings under the call be dispensed with, which was agreed to. And the question having been put upon the motion to reconsider, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 32; for the vote see Appendix I, roll call 140].

Mr. Case moved to amend the report of the committee by striking out in the twenty-fourth line the words "one senator" and inserting the words "two senators"; also by striking out in the fiftieth line the word "five" and inserting the word "four." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 40; for the vote see Appendix I, roll call 141].

Mr. Case moved to amend the report by striking out in the fiftieth line the word "five" and inserting the word "six." And the question having been put, it was decided in the negative. And the ayes and noes having been called

for and ordered, those who voted in the affirmative were [affirmative 25, negative 41; for the vote see Appendix I, roll call 142].

Mr. Case moved to amend the report by striking out in the twenty-fourth line the words "one senator" and inserting the words "two senators"; also by striking out in the fiftieth line the word "five" and inserting the word "three."

Mr. Case said the proposition he now offered was to give Waukesha two senators and three representatives instead of one senator and five representatives. It was acknowledged that on the score of units Waukesha was entitled to a larger representation than had been assigned her, and he said no gentleman could figure her entitled to any less than he had proposed to give her in the amendment he now offered.

Mr. Judd spoke.

Mr. Gifford said he was sorry his colleague in seeking justice to Waukesha had offered this amendment, and he hoped the convention would not do her so much injustice as to adopt it. It was impossible to do justice to her by this in connection with other propositions already disposed of. One senator would have to be elected by three and the other by two assembly districts—one by 5,000 and the other by 2,000 people, which would be grossly unequal. He hoped the convention would not adopt it.

Mr. Cotton thought his constituents would prefer two senators and three representatives, to one and five.

Mr. Case explained. The convention would see the dilemma in which they had placed Waukesha, making it necessary for her either to give up her proper representation or to incur the lesser evil, as he thought, of an inequality in the senatorial districts. He had offered the amendment only as a last resort. If it was adopted, his plan would be to make one large assembly district and elect a senator from the same, leaving the other senator and two representatives to be elected by two smaller districts. Waukesha was entitled to nine units of representation, and what he wanted mainly was to get them. He would have preferred one senator and six representatives.

Mr. Gifford said his honorable friend had made an explanation in his way, and it might be thought, unless he replied, that he was satisfied and saw the matter in a new light. But it was not so. He could not yet see any reason for such a division of Waukesha.

Mr. Judd spoke.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 23, negative 43; for the vote see Appendix I, roll call 143].

Mr. Case moved to amend the report [on No. 18, article on apportionment of representatives] by striking out the twenty-second and twenty-fourth lines and inserting: "The counties of Waukesha and Walworth shall be entitled to elect three senators," which was disagreed to.

The question then recurred upon concurring in the report of the committee.

Mr. Harvey said he hoped the convention would not concur. The amendments so changed the ratio that Waukesha was really entitled to the increase she had asked and which we had refused to accord to her. After all the smoke which had been raised over the apportionment, to so little purpose, he thought it was best to return and adopt the report of the committee as it first came from their hands. As the gentleman from Rock (Mr. Whiton) had said, when in adopting the single district system we had resolved by an overwhelming majority to disregard county lines altogether, it was absurd to talk of giving any county more than its population entitled it to on the score of its county organization. The populous counties would not consent thus to throw away their rights. Mr. Brownell hoped the amendment would prevail. The strict rule of population would operate with great severity, and he thought with injustice, towards the northwestern counties. The counties of Crawford, St. Croix, Chippewa, and La Pointe extended a distance of over four hundred miles, and to give them but one representative and one senator would be equivalent to no representation at all. With the representation they had had heretofore they had been unable to secure their interests and make their influence felt. He thought it was highly proper and no departure from right, to give them an additional member. Their population was not known definitely, but it was probably much greater than the estimate of the committee.

Mr. Harvey inquired what was the probable population. Mr. Brownell said he thought it would exceed 6,000.

Mr. Harvey then called for a division of the question, remarking that he would be willing to give them an additional member, but not the counties of Calumet and Manitowoc.

Mr. Lovell hoped the amendment would not be concurred in. It had been obvious to him from the beginning that it would do injustice to the other counties. He had every disposition and motive

to give the smaller counties all they were entitled to, but this was giving them too much and was unjust to the other counties. The reason applied fully to the case of Crawford and the other north-western counties. As the apportionment stood at first they were overrepresented more than any other district in the territory. If we abandoned population as the basis of representation in some counties it should also be done in the rest. They should all be served alike. It was necessary at any rate to have a fixed plan or principle. The amendment cut loose from all principle. That the committee had been liberally disposed towards the smaller counties was evident by the fact that they had allowed the northwest counties an overrepresentation of 3,000 or 4,000 and Calumet and Manitowoc of over 1,000. It was preposterous to ask any more.

Mr. Richardson said it was known that he was one of those who contended that each county should have a representative at any rate. He acknowledged that population should be the basis as a general rule, but there are exceptions to all rules and there should be to this. The case of small counties was an exception to the general rule. Each organized county had separate interests of its own—it was a small republic—and could not be properly represented by any but a citizen who resided within it. Who else would feel the same interest in it and be as well disposed to secure its interests? The effect would be then, if nothing but population were regarded, that counties which had not quite enough to entitle them to a representation would be uncared for. This would be unjust. He had been willing, he said, in the first place to give to each county a representative and to go upon the basis of population. He thought this would give just about a fair proportion to both large and small counties.

Mr. Featherstonhaugh hoped the amendment, at least as far as it related to Manitowoc and Calumet, would be adopted. It had been said that population should be the only basis of representation. We of the more sparsely settled counties have claimed that territory should be in part the basis. It would be preposterous to go into any further argument to establish this position. Heaven had given us land, but the people had not yet come to occupy it. They would do so soon, however. The interests of those counties are to be permanently effected now when the state is young. Those interests should not be weighed merely by the number of people at present in the county. But as to Calumet and Manitowoc he would repeat what he had often said—that those counties were separated by an impassable

ble barrier and had no interest or feeling in common. One was agricultural, the other commercial. They had no intercourse, and they would be illy mated. Unless each were allowed a representative, Calumet would be in effect swallowed up in Manitowoc. He appealed to the liberality of the convention to anticipate their population by a little and give them even a little more than they were entitled to, rather than allow them to be wholly unrepresented. The former convention had been liberal with them, and so had former legislatures.

Mr. Harvey said that if the argument of the gentleman from Calumet amounted to anything it amounted to this: that it was necessary to represent the harbors and woods of Manitowoc and the mosquitoes, swamps, and tadpoles of Calumet. He goes against population as a basis and he claims no other except the difference in the character and productions of the two counties. To meet his views and yet secure justice to the other counties it would be necessary to form a new apportionment throughout.

Mr. Beall spoke.

Mr. Featherstonhaugh, in answer to the gentleman from Rock, said he had not taken the position that population should not be the basis of representation, but the contrary. He had said that territory should be the basis in part, but population in the main. And in asking a member for each of the counties of Calumet and Manitowoc he did not feel that he was begging anything to which they were not entitled. Those counties were entitled to it as much as the county of Rock itself. There was a feeling of self-reliance, of patriotism, and of county pride which existed in a small county as much as in a large one. As to the swamps, etc., which so much disturbed the gentleman, he would say that he would make use of the arguments in advocating the rights of the small counties which experience had led him to think were most effectual, and he would never desist so long as he could find one Archimedean spot on which to rest his lever.

The question was then taken on concurring in the report, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 51, negative 15; for the vote see Appendix I, roll call 144].

The question was then put upon ordering the article to be engrossed and read a third time, and was agreed to.

The convention then resolved itself into committee of the whole for the further consideration of No. 7, article on the judiciary, Mr. King in the chair.

The vote rejecting the proviso offered by Mr. Martin was reconsidered. And the question being on the adoption of the proviso, Mr. Dunn made a few remarks in favor of it. The proviso was adopted.

Mr. Vanderpoel offered an amendment—an additional section—providing that the legislature should appoint a committee to revise the practice, forms, etc., of judicial proceedings. Mr. Dunn requested as a favor that the gentleman would withdraw his amendment for the present. He said a number of legal gentlemen of the convention had the subject in contemplation and were engaged in preparing a section on this subject. Mr. Vanderpoel withdrew his amendment.

Mr. Kilbourn offered an amendment to section 4, to insert the word “all” in the third line after the words “majority of,” so that a majority of all the judges of the supreme court should be necessary to a decision. He remarked that he thought the committee themselves would concur in this amendment. In the printed bill it was established that a majority of the judges should be a quorum for business and a majority of those present only for a decision. Three were a quorum for business and two a majority of that quorum. So it might often happen that, with a supreme court composed of five judges, the decisions of the courts below might be reversed by only two of them. He thought this should not be so.

Mr. Dunn said he was opposed to inserting the amendment in the place proposed. It would cause difficulty. A majority makes a quorum for business. A majority present should be able to make a decision. If the amendment prevailed, it might be necessary, after a question had been argued, to send out and bring in judges who had not heard the argument to help decide it. If such an amendment were put in at all, it should be put in in another place. It might be proper to provide that four of the judges should be the quorum for business, and then a majority of them required for a decision; but he did not think the amendment of the gentleman from Milwaukee a proper one.

Mr. Kilbourn said his object was to guard the rights of the parties to suits against decisions which might not really reflect the opinions of a majority of the court. It was expected that there

would be five judges on the bench. If four were required for a quorum and the concurrence of three for a decision, that would be sufficient to answer the end he had proposed. He desired to keep the bench full, and was not particular as to the manner of it—any way that suited the honorable chairman of the judiciary committee.

Mr. Dunn said he had given his reasons for going against this amendment. If the gentleman offered one which he thought would be an improvement, he would go for it. The committee were satisfied with the article in its present form.

The amendment was lost.

Mr. Folts offered a substitute for the twenty-first section, providing for the election of county attorneys, etc. Mr. Dunn said he would like to see such a provision in the administrative article but he thought it would not be properly placed in the article on judiciary. Mr. Folts withdrew his substitute and moved to strike out the twenty-first section, which was agreed to.

Mr. Chase offered an amendment, the effect of which was to reduce the term of office of the judges from ten to five years.

Mr. Whiton spoke.

[Mr. Whiton thought that judges were not elected to carry out matters of public policy, but to be governed by truth and justice, and hence it was not necessary that their acts pass in review before the people as often as the officers. He thought five years was too short a term for a judge and was not prepared to say then that ten was too long. *Tri-Weekly Express*, Jan. 20, 1848.]

Mr. Chase said he hoped the amendment would be adopted. The argument which seemed to be most relied on by the advocates of long terms was that brought up by the gentleman from Rock. It was that a judge was not elected to represent any particular views or to deal in matters of ever-varying expediency like a legislator, but was concerned only with the study and application of immutable principles, and that as the mutability of public opinion and policy was valid reason for short terms in the case of legislators, so the immutability of the duties of a judge was a valid argument for his permanent continuance in office. He could see no great force in this. Legislators, as well as judges, should deal in immutable principles, although they were not wholly confined to them. But to whom were judges engaged in administering justice, and who were principally concerned in their labors? The people. They, then, are the ultimate, and the proper, and the best judges of the man-

would be five judges on the bench. If four were required for a quorum and the concurrence of three for a decision, that would be sufficient to answer the end he had proposed. He desired to keep the bench full and was not particular as to the manner of it—any way that suited the honorable chairman of the judiciary committee. Mr. Dunn said he had given his reasons for going against this amendment. If the gentleman offered one which he thought would be an improvement, he would go for it. The committee were satisfied with the article in its present form.

The amendment was lost.

Mr. Folis offered a substitute for the twenty-first section, providing for the election of county attorneys, etc. Mr. Dunn said he would like to see such a provision in the administrative article but he thought it would not be properly placed in the article on judiciary. Mr. Folis withdrew his substitute and moved to strike out the twenty-first section, which was agreed to.

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ner in which justice has been administered to them. Then there should be a frequent, or a somewhat frequent, submission of authority up to them. Judges who had done their duty and deserved well would be reëlected; those who had not would be dropped. What was there in the judiciary any more than in politics or religion, which should not be submitted to the people? He could see nothing. If this were so, then certainly a submission once in five years was not too often. Ten years seemed to place the judiciary practically beyond the power of the people; and some gentlemen even advocated so long a term for that very purpose.

Mr. Dunn said he entertained a high respect for the gentleman from Fond du Lac, though he did not concur in his opinions. The doctrine of short terms and low salaries was a favorite one with many, and in general he believed in it. Yet in the case of judges there was not the same necessity for a frequent recurrence to the people as in the case of political officers. As had been said, the principles with which they were concerned were immutable, and it was the work of a life of patient study, undisturbed by the cares of ambition or the passions which beset almost every other occupation, to become acquainted with those principles and follow them out in all their bearings and consequences, and to become so imbued with their spirit as to be a fit repository and oracle of justice. To secure good judges it was necessary to offer sufficient inducements for men of the highest order of talent to devote their lives to that study. A term of two or three years offered no such inducements. No lawyer, with a practice worth \$2,000 or \$3,000 a year (and a good lawyer's practice should be worth that) would give it up and break up all his business arrangements, to take the office of judge with a salary of \$1,200 for three or five years, with the uncertain prospect of a reëlection. Another reason for long terms was that too frequent elections would place before judges temptations to swerve from duty and to seek popularity as a means of reëlection, in ways which were unbecoming to the dignity of their station. A judge, after giving up his other pursuits in life, and in a measure unfitting himself for them, would very naturally desire a reëlection as a means of subsistence. His pride, moreover, would prompt him to the same, as a failure to secure a reëlection would be construed into a mark of disapprobation. Could it be supposed that with such incentives judges would not do as other candidates do—use every means in their power to secure a reëlection? I have given the sub-

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ject (said Mr. Dunn) the fullest consideration of which I am capable, and I am satisfied that the interests of the judiciary and the people will be best subserved by establishing a term of ten years. If anything in the government should be stable, it should be the judiciary. It was not desirable that the judiciary should be subject to all the ebbs and flows of public opinion. He thought that by the provision for electing a judge once in two years we had secured all necessary accountability in the judiciary.

Mr. Rountree said he was in favor of the amendment, and the remarks of the honorable member from Lafayette had not changed his views. It was very true that experience and long study were necessary to make a good judge, but where these qualities were found we had every reason to believe they would be called into requisition by the people. There was no danger that the people would elect bad judges, when good ones were to be found. The system of an elective judiciary was new in practice, and many even now thought it was dangerous. For his part, he said, he had been in favor of it for years, and his convictions were strengthened daily. The system was now becoming popular among all classes. The reasons that existed for making the judiciary elective at all were equally strong in favor of short terms, for if the intelligence and virtue of the people were a sufficient warrant they would elect good judges once in ten years, it was equally so that they would do it oftener. As to the argument that it was necessary to offer long terms as an inducement for lawyers to give up their business to become judges, such men would have the security on which our whole system of government is based—the virtue and intelligence of the people—that, if the public interest required it, they would be re-elected. Ought they to have any other security? He did not believe there would be any necessity for a good judge to swerve from duty to secure a reelection. He did not believe it would be even good policy for them to do so. Moreover, there was an additional reason for short terms in the present circumstances of the territory.

There are few persons among us at the present time who are qualified for the office of judge and who are so known to the people, newcomers as they are. It was quite possible and probable that proper selections might not be made at first. Ten years was certainly too long a time to endure an incompetent or corrupt judge. But if they were elected for five years, as there were five of them one would be reelected every year; the people would become ac-

customed to vote for them, and to feel the responsibility when so important a trust devolved upon them, and at the same time the bench would be continually filled by experienced judges. He believed that the system of electing judges by the people, and frequently, would not injure but on the contrary would elevate the character of the judiciary and of the people at the same time, and he was therefore very desirous to see the amendment adopted.

Mr. Jackson said he felt it his duty to oppose the amendment proposed by the gentleman from Fond du Lac (Mr. Chase). If judges must be made elective, he thought they should hold their offices a sufficient time to give stability to the courts. The people were in favor of electing their judicial officers. He was instructed to go for this principle and came here prepared to do so. This he said was a great experiment, but it must be tried, and he would not prevent it if he could. But he confessed he had his fears for the result. He doubted whether the system would be found to work as well as its friends anticipated, and it should be entered into with caution. Ten years was perhaps too long a term, but five was too short; he preferred eight years. He had voted for the annual election of governor, senators, and other state officers. But the judges were elected for an entirely different purpose and should be kept far away and above party strife, so far as their official duties were concerned. As had been stated by the gentleman from Lafayette (Judge Dunn), if the judges were to be elected frequently they would be liable to be governed in their official duties by popular impulses. It would be strange if they did not have an eye to a reëlection and consequently would be shaping their course during one term for reëlection to another; and he thought they should be kept as far as possible from temptations of this kind.

But it is said we may get a bad judge, and if so we ought to have an opportunity of putting another in his place. He believed short terms were the very way to get incompetent judges. Lawyers of the first talents would not take the office for short terms. He supposed that judges would be nominated as other officers were, by party caucuses and conventions, and the more frequently they were had the less interest would the people feel in them, and he feared the consequence would be that some third-rate lawyer who could hardly get practice enough to support himself would, by some political maneuvering or through party sympathy, procure a nomination,

and then the party must elect him of course. He thought if the judges were elected for eight or ten years, the people would be apt to take the more interest in the nominations. They would be more likely to attend the primary meetings and see that such men were put in nomination as they themselves would be willing to vote for, and when elected the judges would be free from considerations of a second election. He did not agree with the gentleman from Grant (Mr. Rountree), who said he would have the judges elected frequently like other state officers. Frequent elections would lower the dignity of the courts, render them unstable, and subject them to the popular breeze. We might about as well do away with the higher courts as to have annual elections of the judges. He knew this was against the popular doctrine, but he had fears for the whole system.

Mr. Whiton spoke.

Mr. Gale said that in justice to himself he would state that he opposed the ten-year term of judges when the subject was before the judiciary committee, and he had heard nothing that would induce him to change his opinion. He believed that five years was sufficient length of time for a judge to hold his office before he rendered an account of his stewardship to the people, and if he had discharged his duties with fidelity and ability, there was no doubt but that he would be reëlected. With the gentleman from Rock (Mr. Whiton) he did not believe in a "stable government founded upon long terms of office"; neither did he believe in a stable judiciary system founded on the same basis. It was one of the beauties of the elective system that the officers should occasionally lay their commissions at the feet of the power that gives them, and then, if there is an injudicious election, the difficulty can be remedied. In England long terms of office are given to the judges for the avowed purpose of protecting the people from the encroachments of the government, and gentlemen propose here to give long terms to protect the government. He did not believe the arguments were good in both instances.

The gentleman from Rock (Mr. Whiton) had argued that long terms of office were necessary to protect a citizen from public excitements, and had instanced a private citizen being sued by a county just on the eve of a reëlection of the judge who presided at the trial; but Mr. Gale thought there could not be the least danger, as a higher tribunal had been provided in which every act of the

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judge could be reviewed, and by others, too, who were located remote from such places of excitement. The gentleman from Rock had also argued that it mattered not so much what the law was if it was only settled and known, and had instanced the time of a minor coming of age—that it would make but little difference whether it was twenty-one or twenty-two. And he supposed that the gentleman intended it to be understood that the judge had something to do in making the laws. But Mr. Gale thought it was sufficiently settled that the judge had nothing to do with making the law, but his duty was confined exclusively to administering the law as he found it in the books, and if it was not administered correctly, the injured party had another tribunal to which he could submit his case and obtain justice.

The honorable chairman of the committee (Judge Dunn) had contended that if a short term was prescribed, the best lawyers would not leave their profession for the bench for fear that they could not get reëlected after the expiration of their first term; but if it was true, Mr. Gale would ask how fit men were to be obtained to fill the two-, four-, and six-year terms under the classification as provided for in the report of the committee. If the argument was good it would apply with double force to the shortest time of two years as provided in the article reported. He thought the salary of \$1,500 would command the best talent in the state, and the talent, too, of those who would not fear to lay their commissions at the feet of the people at the end of every five years.

The honorable chairman had also contended that if this amendment were adopted, the first term of the judges would be spent in electioneering for a reëlection; but Mr. Gale had a higher opinion of those who would probably be elevated to the bench at a popular election. The past year had satisfied him that the people in this territory were possessed of as high an order of integrity as any in world, and were every way capable of selecting those who were to govern them or administer their laws. Gentlemen seem to be laboring under the impression that it was unpopular for a judge to administer the law faithfully and fearlessly, but he assured them that the stern integrity of the judge, unflinching in the discharge of his duty, was the only passport to popular favor; and the moment anyone lowered himself to the low station of bending his decisions to aid party friends he would be scouted at and abandoned by all parties and be left alone in his disgrace, unhonored and despised.

But when the judge discharges his duty as an honest and faithful lawyer there is no danger but his services will be appreciated by the people and he will be retained on the bench as long as he may wish.

All concurred in the necessity of an independent judiciary; but there was a judicial independence and a judicial irresponsibility; and, while he contended for the former, he was convinced that the term of office of no judge should be such as would relieve him from that sense of responsibility to the sovereign power which every incumbent in office should feel—such a responsibility to the people that they would not adjourn court for the express purpose of hunting, as had been done under the present system in this territory. The people asked for a reform, and he was satisfied that one was needed; and the only complete and satisfactory one in his opinion was an elective judiciary and a reasonably short term of office.

Mr. Kinne said that before the question was taken he would make a few remarks. As for the principle of an elective judiciary, he fully believed in it—believed that it was safe and practicable, and therefore he hoped the amendment would prevail. It was but an experiment as yet, and it was not good policy, therefore, so to start that if any mistake were made it could not be remedied but by a change of the constitution. It was dangerous to establish an elective judiciary and at the same time, before it was established that good judges would thereby be secured, to make the term of office ten years. It was known that the committee had serious doubts as to the propriety of the elective system, and that that feeling was entertained by many others. In view of these facts, it was our duty to guard against the possibilities of error which might exist. A term of ten years was equivalent to a life term, and the probability of having to endure a bad judge so long was something to be seriously regarded. If there was any danger to be apprehended from the elective system, such a long term increased it tenfold. It had been argued that long terms were necessary to secure stability in the determinations of the courts. It was true that stability was desirable, but not that kind of stability which would be produced by long terms. The stability desirable was that produced by a conformity to truth and justice, which were stable; not that arising from the pertinacity and pride of opinion of men beyond control. Any man, he said, who would look at the records of the supreme court of this territory would bear him out in this. As to the re-

marks about immutable principles, it was not contended that a ten-year term was necessary to preserve these principles. They were safe, and judges elected for five years would decide according to them. The argument was not a new one. The gentleman from Rock had brought it up in the discussion of the legislative article, while with the zeal of a new convert to Democracy he was laboring to demonstrate the impropriety of a longer senatorial term than one year. He had said the duties of a judge and a legislator were radically different. But he had not made any difference appear which should make a long term proper for one, and for the other not. Both were entrusted as servants of the people with responsible duties and both ought to govern their actions by the immutable principles of justice and reason. There was no more reason for stability in the administration than in the enacting of laws. The gentleman from Rock did not see this, and not seeing it his argument had little force. In his new zeal for Democracy he had declared that all officers except judges should be kept in office the shortest possible time in which a cycle of their duties could be completed. If any reason existed for this at all, it would apply as well to judges as to any other officers. But (continued Mr. Kinne) I have been a Democrat some twenty-five years longer than that gentleman, and my fervor has somewhat cooled. My Democracy would be satisfied with a term of two years for senators and governor, and to correspond with these a term of five years for judges. This would be a proper correspondence between the law-enacting and the law-interpreting power, which is a very desirable object.

Mr. Kilbourn offered an amendment to strike out "five" and insert "eight" years as the term of office of the supreme judges. He said he was in favor of the elective system but was opposed to the term of five years. It was too short. The term of eight years had been adopted in New York in their new constitution, after large discussion by the most talented and experienced men in the country. Their system bore a great analogy to ours in other respects, and he thought they should not differ in this. The time would soon come, with the increase of population, when it would be necessary to increase the number of judges to eight. Then, with a term of eight years, it would be necessary to elect one in each year. If the term were five years, then it would be necessary sometimes to elect two in a year. He thought the term of eight years was a very proper medium between the extremes proposed. As to the danger of long

terms on account of keeping a bad judge, if one were unfortunately elected, in office a long time, there was a way provided in the bill to remedy that. It was provided that a judge might be removed by the legislature on good cause being shown. It was not necessary that the offense should be an impeachable one. It might be bad habits, incompetency—anything which in the judgment of the legislature made a change expedient. Thus the people would have complete control over the judiciary, and there could be no danger in a term of eight years.

Mr. Chase said he had hoped the advocates of a long term would have allowed the question to be taken fairly on the question of a five-year term. If that were defeated, then he would go for the next lowest term. He hoped now the gentleman from Milwaukee would withdraw his amendment till the vote had been taken on the five-year term.

Mr. Kilbourn withdrew his amendment. The question was then taken, and the term of five years was adopted, 28 to 24.

The committee then rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. Vanderpoel the convention adjourned.

[PROCEEDING PRINTED]
E. J. COTTON
G. W. FEATHERSTONHAUGH
J. T. LEWIS
J. WARD
JOHN L. DORAN

Mr. Fenton introduced the following resolution, to wit: "Resolved, That the per diem pay and mileage provided by law for members of this convention be allowed to William S. Hamilton for and during the session, and that the President be requested to issue his certificate therefor."

Mr. Doran moved that the fifth rule be suspended for the adoption of said resolution now, which was disagreed to.

Mr. Case moved a reconsideration of the vote taken yesterday by which resolution No. 5, introduced by Mr. Lewis on the eighteenth instant, was rejected. And the question having been put, it was decided in the affirmative. And a division having been called for, there were 23 in the affirmative and 21 in the negative.

THURSDAY, JANUARY 20, 1848

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read and corrected.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 18, article on apportionment of representatives.

Mr. Prentiss, from the committee on schedule and miscellaneous provisions, made the following report, to wit:

"The committee on schedule and miscellaneous provisions, having been instructed by a resolution of the convention to inquire into the expediency of incorporating into the constitution a clause prohibiting the legislature from passing any law establishing rates of toll for grinding grain, or rates of interest for money, have considered the subject assigned them and are unanimously of opinion that it would be inexpedient to incorporate into the constitution a provision inhibiting the legislature as the resolution suggests.

"It may be objected, however, that any restriction upon rates of toll or rates of interest is an interference with the private dealings of individuals and a restraint upon private rights, and should therefore be prohibited in the constitution. But it is equally clear that the constitution itself is a restraint more or less upon private rights. Indeed, it is impossible, in the nature of things, for men to be subject to a government and retain all their natural rights. The idea of government implies restraint. The parties to it mutually surrender a portion of their rights for the better security of the rest and for the promotion of their welfare. But in the opinion of the committee the whole subject is clearly a matter of legislation, and the constitution is not designed to contain the minutiae or details of legislation, but fundamental principles; and they would therefore ask to be discharged from the further consideration of the subject.

[THEODORE PRENTISS]

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J. WARD

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Mr. Doran moved that the fifth rule be suspended for the adoption of said resolution now, which was disagreed to.

Mr. Case moved a reconsideration of the vote taken yesterday by which resolution No. 6, introduced by Mr. Lewis on the eighteenth instant, was rejected. And the question having been put, it was decided in the affirmative. And a division having been called for, there were 25 in the affirmative and 21 in the negative.

The question being on the adoption of the resolution, Mr. Jackson said he could see no necessity for the proposed measure. The people would have the constitution before them and would be capable of judging of its merits without an address. He thought it would be the better course to leave the question of the adoption of the constitution to the people and go on and prepare a constitution. Mr. Judd concurred with Mr. Jackson.

Mr. Lewis stated for the information of the convention that the proposed measure was no new thing. If gentlemen would refer to the journals of all the conventions which had been held for similar objects, except indeed the last one held in this territory, they would find that such an address had always been promulgated. This had been the case in the conventions held in New York in 1822 and 1846. No objections were made to the matter in those conventions, and it was thought correct by everyone. He was willing to admit, if it would please certain gentlemen on that floor, that the last convention which sat in Madison was the wisest body of men that ever was convened here. Still it did not follow that they were perfectly wise in omitting to publish an address. On the contrary, he was inclined to believe that the omission to do so was one cause of the defeat of the constitution which they had prepared; because, no address having been adopted by the convention, one was afterwards prepared and published by the Democratic members of that body; and it thus went forth stamped with a partisan character and claiming the constitution as a party instrument. It was in order that the address might come properly before the people, and not as a party measure, that he had offered the resolution.

Mr. Kilbourn thought they had already been engaged about six weeks in preparing an address to the people. If it was proposed in any manner to operate on the minds of the people by the arguments to be contained in the address, that was the very reason why he would oppose it. He was opposed to exerting any undue influence over the minds of the people. The constitution should go forth on its own merits, and he hoped it would be found in itself all the address that would be necessary.

Mr. Judd made some remarks.

Mr. Lewis said it seemed to him that the main argument against putting forth the address was that the people would get too much light on the subject. He for one was in favor of giving them as much light on it as possible. It was not intended to put forth a

long and elaborate address, but merely a brief statement of the reasons which had led members to the conclusions which were adopted in the constitution.

(Mr. Lewis then read the address of the New York convention.)

The question was then put on the adoption of the resolution, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 32; for the vote see Appendix I, roll call 145].

Mr. Vanderpoel introduced the following resolution, which was read, to wit: "*Resolved*, That the superintendent is hereby directed to furnish the secretary of the convention with a statement of the amount of stationery received by each member, with the cost of the same, and to deliver the balance purchased for the use of the convention to said secretary to be distributed among the members with the cost of the same."

The President announced the appointment of the following committee under the resolution introduced by Mr. Carter on the eighteenth instant, to wit: Messrs. Carter, Case, Featherstonhaugh, Nichols, and Warden.

No. 18, article on apportionment of representatives, was then taken up and read the third time. And the question having been put upon the passage of the article, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 56, negative 10; for the vote see Appendix I, roll call 146].

Mr. Lovell moved that article No. 18, on apportionment of representatives, be referred to committee No. 2, with instructions to distribute representation by single districts, not changing the number of members in any district, which was agreed to.

The convention then resolved itself into committee of the whole for the further consideration of No. 7, article on the judiciary, Mr. King in the chair.

Mr. Bishop offered the following as a substitute for the fourth section: "Section 4. There shall be a separate supreme court, which shall consist of one chief justice and two associate justices, said judges to be elected in single districts by the qualified electors thereof. At the first election for judges the chief justice shall be elected for the term of six years, one associate for four years, and the other for two years; but forever thereafter each and every judge of the supreme court shall be elected for six years, so that one judge of the supreme court shall be elected every two years."

Mr. Bishop said his object in proposing this amendment was to call out an expression of opinion on the subject of a separate supreme court. He believed the principle of having a separate supreme court was a correct one and hoped to hear gentlemen express their views freely on the subject.

Mr. Dunn said that he would state his objections to the amendment and the reason which influenced the committee to report the article as it now stood. The object they had in view was to present to the people a judiciary system which would be adequate to their wants and which at the same time would be cheap and could be supported without unreasonable taxation. If there was any point on which the people might make well-founded objections to the constitution which was now being prepared, it would be the matter of expense. The object, therefore, was to avoid an expensive government on the threshold. If there was a separate supreme court, the judges must have reasonable salaries and the civil list would be swelled. Another reason which had influenced the committee in reporting the article as it stood was that they believed the nisi system of the judiciary preferable to all others. No judges were so well calculated for the efficient discharge of their duties as those who were fresh from the trial of cases, wherein they had had all the advantages of the arguments of counsel. He could see no good reason for burdening the people at this time with the expense of supporting a separate supreme court; but if at any time the people should deem it advisable to organize such a court, after having tested the nisi prius principle, the article left it in the power of the legislature to do so; and this could be done at a time when the people of the new state would be better able to sustain the expense.

Mr. Dunn said that he understood that one of the reasons which induced some gentlemen to advocate a separate supreme court was that they supposed there would be danger in submitting the trial of cases carried up in error to the same judge who had sat on the trial in the court below; that a favoritism and courtesy would be extended to this judge by his brethren on the bench, which would induce them to affirm his decision contrary to their opinions of what was right. So far as his own experience had extended, he had never seen any ground for such a supposition. On the contrary, in the case of the federal judges sitting in bench, he had always observed a disposition to examine with particular scrutiny the decisions of their brethren below. There was a natural principle of emulation among the judges, as among other men. A judge who has a proper respect for himself and for the position which he holds could have no objection to having his decisions nisi corrected in the court above. Decisions nisi were often made in great haste, and it could not be expected that they would be uniformly correct. That judge

must be unreasonable who would assume to himself such infallibility. When his decision should be brought up on error he would be among the first to wish to revise it, for these decisions go forth to the world and are subject to be examined by men of the highest legal attainments. It was therefore entirely a mistake to suppose that such improper indulgence would be extended by his brethren on the bench to the judge whose decision in the court below should be brought up on error. It was an idea founded more on imagination than on reality.

The principal objection to organizing a separate supreme court was the additional expense which would be involved. If two distinct courts, a supreme and a circuit, were organized, it would be necessary to reduce the rate of salary. And having already reduced the term of office of the judges, if the salary were also reduced, where could men competent to discharge the duties of these offices be found who would accept of them? The practice of the law in this territory was a lucrative business and would continue so; and lawyers could not be induced to relinquish their practice and go upon half pay upon the bench. Reduce the term of office and the salary, and you will have a judiciary which will not be any honor to the state.

Why not submit this matter to the test of a little time? If it is not found to work well, the article is so framed that the people can at any time organize a separate supreme court. No great harm could be wrought in so brief an interval. He was of opinion that if a separate organization took place now, consequences would arise of a very injurious character. He had examined the subject maturely and could find no adequate arguments in favor of the amendment. On the contrary, he was opposed to a separate supreme court on principle, as not so good as the *nisi prius* system.

Mr. Lewis addressed the convention as follows: Mr. President—The question under consideration is one of no common magnitude. It is one, sir, in which the people of this territory feel a deep interest; and as my constituents, so far as I am informed, have expressed one and but one opinion, I feel that I should not be doing my duty to myself and to them, did I not at this time express my opinion and what I conceive to be theirs upon this important measure. And yet, sir, I feel a great reluctance in endeavoring to speak upon this or any other subject. When I look

around me and see men of acknowledged talent and ability—men whose hairs have grown gray in search of knowledge—men who have long occupied the bench and halls of legislation with so much honor to themselves and to their country—I can hardly expect to be either edifying or instructive; but I trust they will indulge me for a few moments. I will endeavor to be as brief as possible.

The question under consideration, as I said before, is one of vast importance. It involves the important inquiry: What power shall control the prosperity, the liberty, and the lives of the citizens of the great state of Wisconsin? When we consider that the security of the citizens of this state in the enjoyment of their property, character, lives, and liberty depends upon the proper and sufficient organization of our judiciary system, it seems to me that we cannot be too careful in investigating this subject. It seems to me we should pause and reflect and look about us and see what we are doing; we should let no party feelings or party prejudices, no selfish views or motives infest our bosoms or turn us aside from the path of justice and the path of duty. How many a poor victim has been hurried to his everlasting home by the unjust and cruel decisions of an incompetent and dishonest court! If the dead could be consulted, how many would be the unfortunate victims of a corrupt judiciary who would stand before us and tell us to beware of what we were doing—beware of the corrupting influences of your judiciary system! Although they are not now here in person to admonish us, yet they have left the record of their innocence to do so. They have left the protest of their innocence to the last breath of their existence, to admonish us. They now admonish us. "Their tears are in the raindrops, and their voice in the wailing wind." Let us take heed by their admonitions and see that not a stone is left unturned in investigating this important subject. Let no personal motives influence us—no heartburnings turn us aside from what we believe to be the path of duty and of justice. I do not expect, sir, that we shall get a perfect system. Perfection is not to be looked for in this world. I do not expect that we shall get a system that will suit everybody. Men necessarily entertain different views upon the same subject. Neither do I expect that we shall get a system which will not find its opposers; if not at the hands of the just, it will at the hands of the unjust.

What would be the consequence should they come out against one of their own number? Why, sir, the very

No man e'er felt the halter draw
With good opinion of the law.

But it should be our aim to get a system as nearly perfect as human ingenuity can invent; and to this end I hope and trust the wisdom and the talent of this convention will be directed.

Although, sir, I entertain the highest respect for the talents and integrity of the honorable chairman of the committee who introduced this bill, yet I must beg leave to differ with him in some of the important points of this measure. And I must say that I am very sorry to see so much talent as he possesses arrayed in direct opposition to what I deem one of the most salutary and important parts of a judiciary system (to wit, a separate supreme court); and yet we could hardly expect him to abandon a mother who has given him so much nutriment. Sir, the bill introduced by the committee is in my opinion in direct opposition to one of the great and fundamental principles of jurisprudence, which inculcates that salutary influences are derived from the constitution of courts in such a manner that there shall be a regular gradation from the lowest to the highest, or until you reach the supreme tribunal or court of last resort. But what do you find here? A circuit and supreme court, and both equal, both held by the same men, both elected in the same manner and at the same time. The great difference which can affect their decisions is that the one is held in the country, and the other at the great city of Madison. Do men expect that these judges are to gain wisdom in the transition from the country to Madison? Or do they expect that this capitol is to lend them wisdom and that by sitting here they can correct the errors they have made abroad? Is this capitol to lend them that inspiration which will cause them to change their minds and correct their false impressions? Do men expect that after a cause has once been decided the decision will be reversed? No, sir. The man who decides the cause on the circuit is to go on to the supreme bench and carry there with him, if he has made an error, that same error, and will there be bold to advocate it; while on the other hand, the associate judges, feeling no great anxiety in the matter, will allow the error to pass by unnoticed rather than come out in direct opposition to one of their own number. What would be the consequence should they come out against one of their own number? Why, sir, the very

next cause that might come up for confirmation or reversal, the judge who had been humbled—who had had his pride of opinion wounded—would array himself in direct opposition to his associate. And what would be the consequence? Why, sir, he would go against his associate, right or wrong. So that if the judges are at enmity with each other we shall be liable to get corrupt decisions. If they are friendly with each other, we shall get the same. It will, in the latter case, be "Tickle me, Billy, do, and in turn I will tickle you." So that, take it which way you will—take hold of either horn of the dilemma—you are sure to get corruption. Men, sir, have that pride of opinion that they will not yield. Although they may see the error themselves after it has been made, yet they are too proud to say they were wrong. I do not pretend to say that this is always the case, but I say it would in many instances be the case. There are probably exceptions; but those exceptions are rare and can be found only when you find something approximating perfection, which is not found in the human kind.

Again, let us suppose a case which I think will be in point. Suppose, sir, that there should at any time be but three judges upon the supreme bench, and these are qualified to hold that court under the system introduced by the committee, and suppose those judges should be from districts No. 1, 2, and 3. Now, sir, districts No. 4 and 5 come up each with a case—now bear in mind that these gentlemen who introduce this bill are in favor of the people electing the judges who rule over them—suppose, I say, that districts No. 4 and 5 come up with cases; who are to decide them? Are these judges from districts No. 1, 2, and 3 of their choice? No. They had no voice in electing judges from those districts. Hence the great democratic principle about which gentlemen preach so loudly is entirely destroyed. The gentlemen have flown the track. Here they are going to make a part of the state submit to the decision of three judges, none of whom they had any voice in electing. "Oh, consistency! what a jewel thou art!"

But again, let us suppose another case which may occur under this system: Suppose that one of these three judges is the judge from the district in which the cause was decided, and the other two from other districts. Now, sir, two of these judges are a majority sufficient to decide any cause. Now, sir, when the cause comes up, here is one judge who has expressed an opinion in favor of the de-

fendant in error. Now, sir, he has only to get one judge to go with him to carry the case, while, on the other hand, the plaintiff has to get two. So you see the defendant has the advantage of the plaintiff by one judge.

Again, the duties of circuit judges lead them in entirely a different train of thought, and entirely a different field of labor from that of the judge of the supreme court. Hence there should be a division of labors, and each left to become more perfect in his own proper sphere. It will no doubt be admitted by all that greater skill and perfection is obtained by the division of labor when it can well be done. At least, I think my friend from Fond du Lac (Mr. Chase) will agree with me here. The particular duty of a circuit judge, sir, is to investigate facts and circumstances which arise in the common course of business transactions. He is not called upon to pay that attention to the law which is so necessary to a supreme court judge and which is so necessary to settle precedents and rules and principles for the government of all the inferior courts in the state. But on the other hand, judges who are called upon to sit upon the supreme bench would necessarily have to seek their library and study out and settle those nice points and vexing questions which so often arise in the course of judicial proceedings, and which no lawyer, be he ever so well read, can do correctly without frequent reference to books. I want to see a set of judicial reports from the supreme bench of this state which will be the polar star to all inferior courts—which will carry with them an influence wherever they may chance to go.

But again, another argument in favor of the separate supreme court system and against this system may be drawn from the fact that in making the circuit court the supreme court you impose officers upon different districts whom they had no voice in electing. Now, sir, I hold that the truly democratic ground is that all the people of the state shall have a voice in choosing the officers under whom they serve. In this system the judge elected by one district is to preside over the destinies of all the other districts in the state. As well might we say to New York or any other state, "You may elect a governor for us, and we will elect one for you," etc., etc. Now, sir, this may be what some gentlemen have called the great Democratical principle, etc. But I don't believe it has, like Roger's penknife, the maker's name upon the blade.

But, sir, can we expect it if our circuit judges, who are constantly on the move from one circuit to another, who have no time for study or to examine the law, and who necessarily can have no law with them to examine, are to form our supreme bench? Most certainly not. Wisconsin, under such a state of things, I imagine, would be the laughingstock, rather than the fountain of legal lore. But again, sir, another important reason in my judgment why these courts should be separated is this: We are now about to adopt an entirely new system of choosing our judges. We are now about to adopt what is termed the elective system. Great objections have been raised to this system by some men, and by men, too, who are entitled to respect and confidence—who are entitled to a hearing in this matter. (Not that I would give you to understand that I am opposed to the elective system.) But as I was about to say, it has been urged by sound heads that this system would operate badly; that it was a feature in an elective government which should not be brought into practice; and the great objection is that we shall get a party judge—that we shall have party decisions. Now, sir, should this prove true, it would be deplorable, indeed, and more particularly so should those same party or political judges be allowed to sit again on the same cause as a court of last resort, and there have the opportunity of sealing that awful political sentence which they might have chosen from party purposes to pronounce. The circuit judges, being elected in small districts—in the very districts where they reside, where they wish to make political capital, if at all—may be led astray from the path of duty; but should we have a sufficient supreme court, chosen from the state at large, who would necessarily have no party ends to subserve in any particular district, who would have no political views or interests in common with any particular district or portion of the state, how certain, how sure, would be the remedy to the great evil which so many see in the future operation of the election system!

But again, sir, let us look and see what the great argument which is brought against the separate supreme court amounts to. Let us see what it is. Say gentlemen, "Well, your system is perhaps good enough but it is too expensive, for the reason that more officers must be employed. We are a young people; we cannot stand this expense." What were the views of those gentlemen a few days since, when the salary of the governor was to be fixed? They were mighty rich then. They would give the governor from fifteen hun-

dred to two thousand dollars for doing nothing but stay at home on his farm, should he chance to be a farmer, or stay at home in his office, should he be a professional man—fifteen hundred dollars for taking the honor of governor; but now they are so monstrous poor they must dispense with justice, because the people are too poor. No, sir, this is no argument at all. It is all in my eye; that cock won't fight. I, sir, will go as far in reducing the expenditures of government as those gentlemen, and when the salaries of the officers come to be fixed, we will then see those gentlemen who talk of expensive systems show their magnanimity. I, sir, am going for reducing the salaries of these judges to one thousand dollars, just two-thirds of what these friends of prudence in expenditures have proposed. I want to see a cheap government and at the same time one that is sufficient. Short terms, low salaries, and equal and direct representation is my motto. But let us look a little further into this great argument—that the system is so much more expensive.

Suppose, sir, I had six days' labor in hoeing corn and three days' labor in cutting wheat, which in all would make nine days' labor to be performed. Now, sir, I should like to hear those gentlemen point me out the difference in expense, whether I employ nine men to do that labor in one day, or one man to do it in nine days. Most certainly there is none. Now let us apply this to our judicial system. Wisconsin has got so much judicial business to do. Where can be the difference, so far as dollars and cents are concerned, whether she employ five or eight men to do that business, so that she pays them for no more work than they do? But I contend, sir, on the other hand, that she will need no more, if as many, officers under the separate system, and can get her work done at a cheaper rate than in the mode proposed by the committee. By a division of the labor the officers will become more expert in doing their particular proportion, and hence less time will be employed in doing the business, and therefore less pay will be required. We do not ask, sir, that there should be any more judges elected under this system than the other, or that they should have any higher salaries. We only ask that they may be separated. We ask a division of the business. Take the same number, if you choose, and let a part be elected by general ticket for the supreme bench, and a part by districts for the circuits. We ask that there should be a distinction and not a double man made out of the same man. We have according to all accounts plenty of them now in the house. Don't give us a wheel within a

wheel. We want to see both wheels, and we want to see them separated—the one on one end of the axle, and the other on the other end—that they may support each other. It seems to me in the proposed manner they would be tottlish, lose their center of gravity, and tumble the whole load into the ditch.

Again, I am opposed to the report of the committee on another ground, which is that the terms are too long. I think, sir, that six years should be the longest term, and then I would have them graduated so that one judge (if there were three upon the supreme bench) would go out of office every two years, which would leave two old judges constantly on the bench. Six years, sir, is long enough for the people to have a poor judge inflicted upon them, and if he is a good one, and the people want his services, they will be sure to reëlect him. Not that I would not wish to see a judge an independent officer in the discharge of his duties; but I would not at the same time have him so far removed as not to feel that there is a power above him, as not to feel that he is responsible to the people. Frequent accountability to the people is well calculated to remind public officers that they are not, as some would feign wish to be, lords of the land. That although they can for a time decide the destinies of their fellow men, yet if they do not do it in conformity with the fixed principles of right and justice, they will be called to an account at the bar of public opinion and at the ballot box. That the voice of the people is the sovereign balm which will subdue their overgrown pride and teach them that, elevated as their position is, they may not trespass with impunity.

Again, gentlemen tell us that a separate supreme court is provided for in this bill, through the legislature. So it is; and that is one of the main reasons why I oppose that bill. I would say to those gentlemen, that just so far as they provide for the organization of our judiciary through the legislature, just so far they approach an absolute despotism. What, sir, is an absolute despotism but a union of the three grand departments of government—to wit: the executive, legislative, and judicial—in one man, or set of men? It is, sir, one of the grand features of our republican institutions, that these powers should be kept entirely separated, and that one may not be dependent upon, or superior to, another. But what is proposed here? To leave the highest court in the hands of the legislature, thus making that court and through that the inferior courts entirely subservient to that body. No, sir, it will not do. This is

one of the duties we are sent here to perform. We are sent here to fix the general principles of our government, and for the very purpose of separating and keeping separate these three grand features in our republican system. We are sent here, sir, to fix the landmarks, to lay the foundation, of a republican government and not a despotism. It is only by keeping these three departments of government entirely separate that the people of this country are so amply secured the blessings of equal laws and impartial justice.

Mr. President, I have already trespassed upon the time and attention of this house too long—longer than I intended when I arose. My excuse is that I feel interested in behalf of the people of the territory in this matter. I feel that gentlemen coming from the north, south, and east have not fully represented their constituents on this subject. I am aware, sir, that gentlemen in the heat of debate are apt to say things they do not mean—are apt to say things which in their sober moments they would disdain to utter. I fear it may be the case here. Now, sir, it is our duty to open and expand our minds and to rise above all such feeling in the great work in which we are engaged. I would ask gentlemen to pause and consider and ask themselves the question—particularly from the north, south, and east—whether this is not the same system which is now in use in this territory. Whether they ever heard the first redeeming word spoken in praise of the present judiciary system. Whether they have not heard it cursed and condemned unqualifiedly by every person they have ever heard speak upon the subject. Whether they have not heard men belonging to this convention make the remark that they never could vote for a constitution which contained the present judiciary system. Whether they have not heard men in this capitol, men high in office in our territorial government, men of influence in this territory, assert boldly that they would feel themselves in duty bound to vote against and oppose any constitution which contained a judiciary system similar to the one now in use in this territory. I would ask the honorable chairman of the committee who introduced this bill if he has not in past time during his judicial labors been compelled to denounce the system as a bad one. In view of all these facts I am surprised to see gentlemen come forward here with all the sangfroid imaginable and support this measure. As I said before, I have occupied your attention too long; but, sir, I have a strong feeling for Wisconsin. I have adopted her as my home. If God should spare my life I expect long

to live within her borders, and my wish is that she may hold out to the world a noble example of a free government; that she may dispense equal justice to all—the rich and the poor, the lame and the blind; “that she may have length of days in her right hand and in her left riches and honor.”

Mr. Dunn, in answer to the inquiry of Mr. Lewis and his effort to charge him with inconsistency, said that he had never been in favor of a separate organization of the supreme court. He did not pander to popular views but professed to maintain opinions, and manly opinions, of his own upon all subjects.

Mr. Gale said he was willing to acknowledge that there were differences of opinion in relation to the propriety of having the supreme court judges perform circuit duty, but on a careful examination of the subject he believed that was the best policy. It had been argued by the gentleman from Columbia (Mr. Lewis) as though this was a new and untried experiment; but he assured the gentleman that this was the prevailing system in most of the United States. The *nisi prius* system, as it is called, is adopted under the laws of the United States, by the New England states and in most of the other states in the Union. This system was in operation in the state of New York until the adoption of their constitution in 1821, when it was changed; but on the revision of their constitution in 1846 it was again revived, and their experience for twenty-five years had satisfied them that this was the most practicable system.

The main objection urged was that the judges might be disposed to exercise a favoritism in sustaining each other's decisions, but he had no fear of that. The judges were selected with reference to legal knowledge and integrity of character, and he thought no one would violate both and publish to the world in the printed reports that he was a fool and a knave. They would have too much pride of character to do that, in his opinion. It was generally supposed that all the business in the supreme court for several years to come would not occupy the time of the supreme court more than four weeks in each year; and he did not believe it was necessary to support three judges at an annual cost of \$5,000, expressly to do that amount of business.

In our new state the advantages of a practice in both courts he thought was necessary to school the judges in their complicated duties. They would, while on the circuit, become acquainted with the custom and necessities of the people, the administration of the

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law as particularly connected with the facts, and when brought together in the supreme court they would have the opportunity of examining the abstract principles as finally adjudicated and settled as the law of the state. Everyone cannot but see the advantages to be thus derived. The gentleman from Columbia had also argued that under this system our supreme court reports must necessarily become the subject of ridicule with the bar; but Mr. Gale said experience had proved directly the contrary. He would ask the gentleman what reports were held in higher estimation by the bar than those of the Supreme Court of the United States and of Massachusetts, and Johnson's reports of the state of New York. Indeed, it had been asserted on this floor in the last convention by some of the best legal talent in the territory that Johnson's reports of cases decided in New York while under the *nisi prius* system were decidedly better authorities than those reports of cases in the same state after the adoption of a different system. He would deplore the organization of a supreme court to be composed of men who necessarily would have no practice on the circuits and so small an amount of business as to become rusty bookworms, or else too indolent to discharge any business of importance, and much less the business of the supreme court.

Mr. Kilbourn said there were two particulars in which he would like to see the amendment corrected, if it should be adopted by the convention. One was in regard to the term, which he proposed to amend by striking out six years and inserting nine; striking out four and inserting six; and striking out two and inserting three. The other alteration was to have the election made by the people of the territory at large, and not by single districts. The supreme court represented the whole people. It was, therefore, clear to his mind that they should be elected by the whole people. He would submit that amendment first. Mr. Bishop accepted the amendment.

Mr. Lakin said he was in favor of single districts and thought the arguments which had been adduced in favor of that principle as applied to members of the assembly would apply with peculiar force to judges. If the other principle were applied, all the judges might be selected from one part of the territory, and the other parts would be unacquainted with their merits. Again, in that event many subjects might be brought before them with which they were not acquainted. How would judges elected from Green Bay be able to try causes which involved mining interests? By dividing the

state into districts and electing the judges from them, as was done in Illinois, this difficulty would be obviated. The gentleman from Milwaukee had said that the judges should be elected by general ticket because they would represent the whole state. He denied that position. The judges would not represent any part of the state. They would not be elected to represent particular interests.

Mr. Doran hoped that gentlemen who were friendly to a separate supreme court would allow that question to be tested on its merits in the first place, without encumbering it with amendments. There were gentlemen on the floor who were in favor of a separate supreme court, but who might not be willing to vote for either of the amendments suggested. Mr. Kilbourn accepted the suggestion of Mr. Doran so far as to have the term in the amendment left blank. Mr. Bishop accepted the amendment.

Mr. Whiton made some remarks.

Mr. Martin did not arise with the intention of debating the question. He thought the minds of members were probably made up on the question of a separate supreme court. There was one point, however, which had not been touched upon, to which he wished to call the attention of the convention. The arguments which had been brought forward in support of the nisi prius system were really arguments against the system proposed by the report of the committee, because that system was not in fact the nisi prius system. For in the very same section of the article by which the nisi prius system is established, it is provided that the legislature shall have power to knock that system over and build up a separate supreme court. He wished to see either the one thing or the other determined on; not to have the matter left at loose ends, at the mercy of any legislature that might come here. In times of great party excitement a legislature might be elected composed altogether of one party. That legislature might erect a separate supreme court. The next legislature of an opposite party might pull it down. If the majority desired a nisi prius system, let us have it; if a separate supreme court, so let it be settled.

Mr. Dunn arose simply to correct an error into which he thought Mr. Martin had fallen. It was not to be supposed that the legislature at its very first session would establish a supreme court. The article certainly allowed the legislature to organize a supreme court, but not to destroy the circuit system.

The committee then rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. Jackson the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The convention then resolved itself into committee of the whole for the further consideration of No. 7, article on the judiciary, Mr. King in the chair.

Mr. Doran said: I fully agree, sir, with all the gentlemen who have preceded me as to the importance of the subject now under consideration of the committee, and only regret that I feel called on to take any part in the debate, fully sensible as I am of the very slender resources of which I shall be able to avail myself in the discussion. But when I heard the honorable gentleman from Rock (Mr. Whiton) referring to the beauties and excellencies of the nisi prius system, as known for centuries in England and in this country since the organization of the Supreme Court of the United States, and also in many of the New England states, and attempting to trace any analogy between the judicial organization offered the convention in the article now presented to the committee for deliberation and the English nisi prius system, I felt it to rest on me as an imperative duty to show that no such analogy existed; and that in fact no analogy ever did exist even between the organization of the Supreme Court of the United States and the English nisi prius system; although I have no doubt it was intended to model that court after the English plan.

Before entering on this branch of the subject, however, I wish, sir, to direct the attention of the committee to a fact which gives a weight, an influence, and an importance to this report of the judiciary committee, to which it is not in my mind entitled. It will be recollected that in the early part of the session, when my honorable colleague (Mr. Kilbourn) in order to expedite business proposed to have the convention instruct the several committees on certain points, it was objected to on the ground, principally, as stated by the honorable gentleman from Dodge (Mr. Judd), that those several committees had been selected with great care and composed each of gentlemen from different parts of the territory, in order to reflect through them the opinion of the people of the territory on the different subjects submitted to them. But instead

of the fact being as stated by the honorable gentleman from Dodge on that occasion, I find that this important committee was drawn exclusively from the southern tier of counties: from Racine, Walworth, Rock, and Lafayette—and two of the five from that favored county, Racine. I am willing to admit, sir, all that may be claimed of qualification for those five honorable gentlemen by way of legal or other attainments; and further, that they are very competent to draw up a judicial system for any state of this Union or for any country; but I am not prepared to admit that they fairly represent the opinion of the territory generally on this important subject of a separate supreme court. I undertake to say that five members could not be drawn from different parts of the territory who would have concurred in such a report. Look, for instance, at the counties immediately west and northwest of Lafayette, and you find the legal gentlemen from those counties opposed to the plan submitted; so all round in that direction. Come back to the east of this southern tier, and you find the same opposition. The legal gentleman from Washington County (Mr. Turner) opposed the plan of the committee, as does also the gentleman from Columbia (Mr. Lewis). Hence it is that the opinion expressed in this report is entirely sectional.

The judiciary committee already wield too much of an influence from certain other extraneous circumstances, without permitting the belief that they represented the opinion of the people of different parts of the territory, when such was not the case. Quite enough of influence is it that they have at their head, as chairman, the chief justice of the supreme court of the territory, with the many advantages of long experience and varied resources which the friends of that honorable gentleman claim for him, surrounded as he is by the other luminaries of the committee, and all collected into this one bright and burning focus. For my part, sir, I feel too keenly the fearful odds with which the opponents of this measure have to contend at best, without allowing those who unfortunately want to fasten this system on the country the slightest advantage. True, the judiciary committee have the advantages of concert of action, of long, elaborate, and mature investigation, while those who are in the opposition approach the subject with defective information, and in such a manner as is well calculated to inspire anything but a sanguine hope of success. All this I will admit; but

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The judiciary committee already wielded too much of an influence from certain other extraneous circumstances without pertinently the belief that they represented the opinion of the people of different parts of the territory, when such was not the case. Quite enough of influence is it that they have at their hand, as chairman, the chief justice of the supreme court of the territory, with the many advantages of long experience and varied resources which the friends of that honorable gentleman claim for him, surrounded as he is by the other luminaries of the committee, and all collected into this one bright and burning focus. For my part, sir, I feel too keenly the fearful odds with which the opponents of this measure have to contend at best, without allowing those who unfortunately want to fasten this system on the country the slightest advantage. True, the judiciary committee have the advantages of concert of action, of long, elaborate, and mature investigation, while those who are in the opposition approach the subject with defective information, and in such a manner as is well calculated to inspire anything but a sanguine hope of success. All this I will admit; but

I cannot admit that five honorable gentlemen from the four counties named represent the opinion of the territory.

The honorable gentleman from Lafayette, who first addressed the committee in favor of the reported article, did not tell us what this nisi meant, that he said he so much preferred; nor the reason of his preference, further than that it would save expense; nor did the honorable gentleman from Rock go far into details, although he dealt largely in general assertions. Now, sir, I make bold to say that there is little analogy between the system offered us in this report and the Supreme Court of the United States; and that between the Supreme Court of the United States and the English nisi prius system there is no analogy whatever. And I shall undertake further to show that the Supreme Court of the United States was originally organized by the law of 1789 on a false analogy, and on an ill-judged plan, which now unfortunately seems to determine the judiciary committee who offer us this system. Nay, it has even been well said and ably maintained—although there never could be a judicial decision on the point—that it was contrary to the meaning of the spirit and letter of the Constitution of the United States for the judges of the Supreme Court to be the judges of the inferior courts authorized by the Constitution. I know it may be urged that many of the framers of the Constitution were in Congress when the judiciary act of 1789 was passed, and to this I am willing to give great weight; but it proves too much, and in legal parlance therefore proves nothing. Because the Supreme Court have long since decided in the celebrated case of *Marbury v. Madison*, when secretary of state, that the thirteenth section of that act was unconstitutional; and if one part could be unconstitutional, another might. And in support of the constitutionality ["unconstitutionality" in *Madison Tri-Weekly Express*, Jan. 25, 1848] of that part of the law which allowed the judges of the Supreme Court to be the judges of the inferior courts, I need only refer to the undeviating opinion of Judge Parsons—the ever-memorable Theophilus Parsons—who while at the bar and when on the bench had but one opinion on the subject; and this opinion he was understood to have retained to the day of his death. Indeed nothing but the absolute necessity of the occasion—an impoverished treasury—could justify or tolerate the idea of a judge, the component part of a superior court, coming down and adjudicating on a case in an inferior court and again ascending the bench of the superior court

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to review the same case and the decision given below. Sir, it is a system not only unfriendly to justice but absolutely repugnant to its fair and pure administration—a system such as cannot be found on any other part of the globe—much less in England. Yet gentlemen on the other side claim for it the perfections of the English system without any, the slightest, analogy, as I shall show. But that system, bad as it is, has not been offered us in the report. We are to have district judges, elected in districts, ascend to compose the supreme court; while by that above alluded to of the Supreme Court of the United States, the Supreme Court judges came down and scattered themselves to hold the circuit courts, with original jurisdiction therein and appellate jurisdiction from the district courts of the United States. Perhaps it might be asked: Have not the decisions of the Supreme Court of the United States given general satisfaction? Admitting this to be true for argument's sake (although I deny the fact and will prove, before I get through, that such is not the case), yet the merit has not been due to the system, but to the judges in spite of the system. And here again the analogy between the proposed system and even the Supreme Court fails; in the latter case the judges were appointed for life, after a most careful selection; in the former they are to be picked up from the districts and elected for the term of five years, a term little if any too long for an important electioneering campaign. The old New York nisi system before the change in the constitution of 1821, I am free to admit, worked well; but it approximated closely the English nisi system; and with the counterpoise or check of a court of errors such as then regulated the New York system, I would not object to the plan reported. But without such, it is an experiment too dangerous to contemplate.

I would now, sir, beg to direct the attention of the committee for a few moments to the number and organization of the English courts, in order to explain what this mysterious nisi system actually is, and to disprove the analogy claimed by the gentleman from Rock between the mongrel system now offered us and that which prevails in England. The English common law courts of general jurisdiction are three, and are presided over by four judges in each. These courts are designated as the Court of Common Pleas, of Exchequer, and King's Bench, with the superintending court of Exchequer Chamber, which is presided over by the twelve judges and the Lord High Chancellor, and occasionally the Lord Treasurer.

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All civil suits tried at nisi prius are first commenced in one or other of the three courts that I have first named, in Westminster Hall, and the record, when completed there, is delivered to some one of the judges indiscriminately, who, with a judge for the criminal side, runs into every county in the kingdom twice in each year, and holds what are called courts of assize, or nisi prius. But this judge, on the civil side, taking with him the record complete from one of the courts of Westminster, has nothing whatever to do but try the question of fact, by the aid of a jury, on pleadings already settled, in the court from which the record proceeds. He gives no final judgment, nor does he even make any interlocutory order touching the cause. The trial being thus had, the record with the verdict and judge's notes is taken back to Westminster Hall, so that whether the judge who presided at this court of assize be one of the judges who is to preside on the final examination of the case in Westminster Hall is a matter of perfect indifference, inasmuch as he has rendered no judgment, nor could he imbibe the slightest "pride of opinion," so baneful to the true administration of justice under the so-called nisi system as generally known in this country. And of this record so brought back, judgment is entered after an unbiased revision of the four judges. But this judgement, if rendered in either the Common Pleas or Exchequer, may be taken on error into the court of King's Bench; and thence again into the Exchequer Chamber, before the twelve judges and the Lord Chancellor; and even thence again to the House of Lords. So that from two of the courts there are three appellate tribunals, and from the court of King's Bench there are two. Now, I will ask if there is any analogy, if there can be any analogy traced, between the organization of the Supreme Court of the United States and the English courts as regards trials at nisi prius. Hence it follows that notwithstanding gentlemen desire to liken the proposed organization to that of the Supreme Court of the United States, even though it were so, it is obnoxious to all the objections to which a court of last resort, presided over even in part by a judge who adjudicated below, is subject. And before I go into an examination of some of those many palpable objections, I propose as briefly as possible to show the committee that the experienced and intelligent of the country have from time to time been endeavoring to shake off the nisi prius

All civil suits tried at nisi prius are first commenced in one or other of the three courts that I have first named, in Westminster Hall, and the record, when completed there, is delivered to some one of the judges indifferently, who, with a judge for the criminal side, runs into every county in the kingdom twice in each year, and holds what are called courts of assize, or nisi prius. But this judge, on the civil side, taking with him the record complete from one of the courts of Westminster, has nothing whatever to do but try the question of fact, by the aid of a jury, on pleadings already settled, in the court from which the record proceeds. He gives no final judgment, nor does he even make any interlocutory order touching the cause. The trial being thus had, the record with the verdict and judge's notes is taken back to Westminster Hall, so that whether the judge who presided at this court of assize be one of the judges who is to preside on the final examination of the case in Westminster Hall is a matter of perfect indifference, inasmuch as he has rendered no judgment, nor could he interfere the slightest "pride of opinion," so baneful to the true administration of justice, under the so-called nisi prius system as generally known in this country. And of this record so brought back judgment is entered after an unbiased revision of the four judges. But this judgment, if reversed in either the Common Pleas or Exchequer, may be taken on error into the court of King's Bench; and thence again into the Exchequer Chamber, before the twelve judges great and small; and even thence again to the House of Lords. So that from two of the courts there are three appellate tribunals, and from the court of King's Bench there are two. Now, I will ask if there is any analogy, if there can be any analogy traced, between the organization of the Supreme Court of the United States and the English courts as regards trials at nisi prius. Hence it follows that notwithstanding gentlemen desire to liken the proposed organization to that of the Supreme Court of the United States, even though it were so, it is obnoxious to all the objections to which a court of last resort presided over even in part by a judge who adjudicated below is subject. And before I go into an examination of some of those many palpable objections, I propose as briefly as possible to show the committee that the experienced and intelligent of the country have from time to time been endeavoring to shake off the nisi prius

system as engrafted on the Supreme Court of the United States, and that at one time they succeeded.

Soon after the passage of the judiciary law of 1789 it was found to be very objectionable; but the principal defect at first discovered consisted in the delays and disappointments occasioned by the judges (who had each to attend a circuit twice every year) not being able to traverse the vast extent of country assigned them. The states then in the Union were divided into six circuits, and two judges were assigned each circuit; but they were to "rotate" also—another objectionable feature in the original law, from which the late convention took the hint, but without any of the reasons that operated on the legislators of 1789. The rules of property and the practice being then, as now, very different in the several states, it was considered necessary to run the judges into them on circuit duty, in order to make them familiar with the laws, usages, and different modes of practice in those several states and territories. But practically this system had an effect the very contrary of what was looked for. It not only failed to establish a uniformity of practice in the different circuits, but no uniformity could be maintained in any one circuit. The lawyers of the eastern, middle, and southern states, from among whom the judges should necessarily be selected, having been educated in different schools, could not divest themselves of the prejudices thus early inculcated; and had they, when called to the bench, attempted severally to forget the accustomed rules of property and practice, they would have had no law at hand to support any one decision. Thus they resolved to stand by the decisions they knew and were conversant with, rather than look for the law or usage of the circuit into which they were compelled to travel. Doubtless there was uniformity in the decisions of the same judge, but as the same one seldom came twice successively over the same circuit, and occasionally not till after an interval of some two or three years, his opinions were forgotten or reversed before he returned. Hence the successive terms of those circuit courts established decisions and rules of practice as different from each other as is the South from the East, and consequently left the courts in a perpetual state of fluctuation. No system of practice could grow up; no certainty of rule could be established. The seeds sown in one term could scarcely vegetate before they were trodden down. The opinion of a former judge was no precedent to his successor, each considering himself bound to follow the light of

his own understanding; and to such an extent was this carried that decisions of judges were so frequently reversed and so many interlocutory and other orders given during the progress of the suit by the different judges, that when the case would come before the Supreme Court there could not be found more than one judge competent to adjudicate; all the other five having from time to time sat on some part of the case in the court below.

I should not at this time dwell so minutely on the defects of this "rotary" system, but that I find some gentlemen in favor of the judiciary article in the late constitution, as also because I am informed there is a kind of compromise system about to be offered to the convention, and therefore, sir, that no time is lost in thus glancing at some of the many defects of the rotary system. And although the compromise amendment provides only, as I am informed, for allowing or rather compelling the supreme court judges to hold circuit courts in the same circuit, still it is open to most of the objections applicable to the case I have before stated.

But to return for a moment to the model nisi prius system. In 1792 the judges of the Supreme Court, tired out with the complaints as well as with the continued traveling, memorialized the President, requesting him to suggest to Congress the propriety of a change in this branch of the law of 1789. The change was suggested, and the evil remedied in a way, too, sufficiently awkward and curious, and the more so as an evil still more objectionable was created. Instead of two judges going circuit together, the law of 1793 provided for only one, and the district judge to act as associate. But whenever a case would come before the court that the district judge had adjudicated, he had to stand aside; and whenever he disagreed in opinion with the circuit judge, the case was to be referred to the Supreme Court. Allusion to this defect would be unnecessary here for any purpose except to point out the difficulty of getting right after a wrong start, and the caution necessary to guard against such evils.

But, sir, during all this time and continuously up to 1801 the voice of the people was being heard by petition and remonstrance against this much lauded nisi system, till in that year, after great and mature deliberation, an act was passed, in this last year of the administration of the elder Adams, establishing a separate Supreme Court. Thus nearly twelve years rolled round before a change could be effected in the pernicious and blighting system established under

the law of 1789—a system, however, very superior in many respects to that offered us by the judiciary committee. The judiciary system established by the law of 1801 was moulded by the ablest jurists and statesmen that ever adorned any country in any age, and perhaps approached as closely to a perfect one as could be expected. But, alas! The ruthless vandal hand of party was soon to be employed in demolishing this beautiful structure of human ingenuity, in maturing which the best talent of the day had been wisely expended. But even while the destroyer's hand was at work, no one ventured the assertion that there ought not to be a separate court. No, the pretext was economy; other motives, however, have been assigned by the impartial historian for this unhallowed deed. And strange enough, too, here the same reason, economy, is assigned for compelling us to adopt the nisi system which the twelve years' trial up to that time had condemned. In 1802 the country was partially drawn back to the old system by the repeal of the law of 1801, to which I have alluded. And some of the best friends of Mr. Jefferson's administration have never forgiven or forgotten the manner in which that law was repealed, or the extraordinary statements which accompanied the message in relation to this subject. However, it was repealed; but in 1819 the Senate of the United States passed a bill providing for a separate Supreme Court, and nearly in the words of the statute of 1801, thus proving that public opinion was all the while working for this great principle. The House of Representatives unfortunately had not time to act on the bill that year; and circumstances which I shall explain satisfactorily have prevented further action thereon ever since.

About this time the decision of the Supreme Court in the celebrated *Olmstead* case in Pennsylvania and the decisions of the same tribunal relative to the occupying claimant laws of Kentucky gave great dissatisfaction to the western states—so much so that Pennsylvania solicited the aid of Virginia to resist the decision, while Kentucky, though no less chagrined, turned her battery in another and a more effectual direction. This was to increase the number of judges on the Supreme Bench so that the western states might have a proportionate representation there, as in Congress. This agitation was kept up for several years, till finally the judiciary law of 1826 increased the number of judges to ten—another instance of the effect of perseverance. But it is worthy of our best attention that for the many years during which the western states

were knocking at the door of Congress for what they called justice, in consequence of the decisions I before referred to, all this time the ablest men of the Democratic party, from Mr. Van Buren downwards, were expressing doubts of the expediency of increasing the numerical strength of the Supreme Court and urging the necessity of recurring to the law of 1801: a law matured under the administration, as I said, of the elder Adams and repealed soon after the accession of Mr. Jefferson to the presidential chair. Now, I contend, sir, that no greater proof can be given of the merits of this law of 1801, establishing a separate Supreme Court, and of the great principle therein contained, than that it was enacted in the palmiest days, although near the downfall, of the great Federal party, as known from 1790 to 1801, and again partially adopted in 1819, and referred to by the great Democratic party during the struggles of the western states for an accession to the Supreme Court, as a model worth returning to and worth adopting. True, the western states prevailed, but this does not affect the principle; and if the northwestern states recently admitted and about to be admitted into the Union should ever find occasion to clamor for representation in the Supreme Court, as did Kentucky and the other western states, aided by Georgia at the south, about the time I allude to, great danger may be apprehended from too great an enlargement of that tribunal. Thus it is that this system, first adopted by mistake, by a false analogy, and according to the authorities of the debates in the Virginian and Massachusetts conventions, on the authority of the writers of the *Federalist*, and last, not least, on the authority of the never-to-be-forgotten Theophilus Parsons—*clarum et venerabile nomen*—in direct violation of the Constitution, and practically intolerable, has ever since been fastened upon the country and is now quoted as a reason why we should adopt a similar system. I should rather have expected to find the honorable gentleman from Rock (Mr. Whiton) fighting in opposition to instead of extolling the merits of this mongrel organization, and thus carrying out the views of the great men of his party, at the period I refer to.

I will now refer to another argument—and that, too, the most paltry one—used by the judiciary committee in support of their plan. They say they are anxious to keep down the expense of judicial and other officers; that they don't like to see officers fed at the public crib and having nothing to do; and that if you establish

a separate supreme court the judges instead of mixing in the world like other men will become as monks, leading an ascetic life and getting rusty in their profession. The plan proposed by the advocates of a separate supreme court contemplates very little additional expense. I would reduce the circuit judges to four and allow three for the supreme bench. This would be an increase of only two, and by a calculation I ascertain that to the present population, allowing one-half for minors and females, this would be an expense of only five cents a head. But there are many who consider that three circuit judges could do the business for the next five years, and I am one of the number who entertain that opinion. For of the 214,000 population now in the territory, 114,000 of that number are embraced in the third judicial district, of which the Hon. A. G. Miller is judge; and I don't see that he is any overworked.

It is true, sir, quite true, as I believe, that there has not been much business in the supreme court of this territory; nor do I believe there ever will be under the present or proposed system. The people have no confidence in that court as now organized—nay, I am bold to say that they entertain a strong prejudice against the present organization of that court; and I know of many who would sooner submit to what they would consider an unjust and illegal judgment or decision than have recourse to that court for redress of a real or imaginary wrong. And permit me to add that in my opinion it is of as much, or nearly as much, importance that the public should be satisfied that justice was purely and fairly administered, as to have it so administered and they to think it were not so. Let the public lose confidence in the purity of your appellate court, and few will resort there. As to judges becoming rusty unless kept on the tramp from circuit to circuit, I can only reply that the honorable gentleman from Rock who raises that objection seems to have forgotten the maxim of my Lord Coke who always urged the "*lucubrationes viginti annorum*" as a necessary, an indispensable qualification for even a puisne judge; so that on this principle we should require ten additional years of study and preparation in and out of court, for a judge of our supreme court. And if so it would be incompatible to expect such a man to possess the qualifications of post-boy and judge at the same time. For my part, sir, I should much prefer seeing a judge of the supreme court in the state library tracing the analogies of law, than hunting after the forms and practice to be found in the inferior courts. But, *de*

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It is true, six, quite true, as I believe, that there has not been much business in the supreme court of this territory; nor do I believe there ever will be under the present or proposed system. The people have no confidence in that court as now organized—nay, I am bold to say that they entertain a strong prejudice against the present organization of that court; and I know of many who would sooner submit to what they would consider an unjust and illegal judgment or decision than have recourse to that court for redress of a real or imaginary wrong. And permit me to add that in my opinion it is of as much, or nearly as much, importance that the public should be satisfied that justice was purely and fairly administered, as to have it so administered and they to think it were not so. Let the public lose confidence in the purity of your appellate court, and few will resort there. As to judges becoming rusty, unless kept on the tramp from circuit to circuit, I can only reply that the honorable gentleman from Rock who raises that objection seems to have forgotten the maxim of my Lord Coke who always urged the "incurtationem viginti annorum" as a necessary, an indispensable qualification for even a puisne judge; so that on this principle we should require ten additional years of study and preparation in and out of court for a judge of our supreme court. And if so it would be incompatible to expect such a man to possess the qualifications of post-boy and judge at the same time. For my part, sir, I should much prefer seeing a judge of the supreme court in the state library tracing the analogies of law, than hunting after the forms and practice to be found in the inferior courts. But he

gustibus nil disputandum. For myself, when the difference of the expense is so very trifling, I must say I should much prefer a court without business, to business without the court.

I shall now, sir, suppose this supreme court to be organized agreeably to the plan suggested by the judiciary committee; and, further, I will suppose a suitor who knows nothing of the organization of the court to have carried a cause there by appeal. What, I ask you, do you believe will be the feelings of that suitor when he will have seen on the supreme bench the judge who decided against him in the court below? Will he not stare with astonishment and immediately ask his attorney how this had happened? He will be told that it is a constitutional arrangement and can't be obviated. In ninety-nine cases out of a hundred I do believe a man so circumstanced would feel disposed to get out of that court as soon as he could, little caring about a decision; and, further, that in many cases parties knowing the organization of the court would not go there on appeal no matter how much aggrieved. It may be said that the judge who decided below does not give his voice in the decision above; but can it be denied that he brings on the bench his pride of opinion—his influence, personal and political—and perhaps a prejudice personally and politically—and that he receives, as he is entitled to receive, on the fairest principles of reciprocity from all his associates, a respectful deference for his opinion? For, having tried the case once, he will be presumed to know more in relation to its real merits than those who have previously known nothing about it. What, may I ask, sir, do these several circuit judges meet for? Is it not for the correction of mutual errors, and will not their meetings as certainly tend to the confirmation of mutual opinion? This doubtless will be the inevitable consequence. And indeed I could scarcely suppress a smile when I heard the honorable gentleman from Lafayette (Mr. Dunn) with such genuine simplicity tell us how courteously and with what anxiety judges court a revision and correction of their decisions from their brother judges and that such was the general practice. I have no doubt courtesies are reciprocated in such cases, but in quite a different way. The favor that A asks of B, B asks of C, and thus it is that this courtly courtesy, which I believe does and will run through the bench in such cases, will destroy the even current of justice. I once saw a case of this kind, and a gentleman assured me he would rather than have a thousand dollars see the judge that tried his case below off

the bench during the trial above, although he said he had a high opinion of that judge's integrity and impartiality. But he considered a judge could not get over his pride of opinion under such circumstances. But under our elective system and the short terms that will almost inevitably accompany that system the hope of an impartial decision will be diminished by many degrees.

On what ground, sir, will a judge rely with most confidence for reëlection? Why, on the ground that his decisions have been confirmed in the supreme court. Every reversal will operate as a disqualification or indirect proof of a want of the proper qualifications. Will not the judge, then, whose subsistence depends on his office, do everything, *fas et nefas*, to prove himself worthy of reëlection? And consequently he will use his influence with his associate judges to prevent a reversal of his decisions and most courteously reciprocate the opportunity of serving, and so on through the entire court, all of which in the wide range of legal arbitrament can be done effectually and imperceptibly. Will not a judge, sir, while he is examining the sentence of a brother today remember that that brother will sit in judgment upon his proceedings tomorrow? Are the judges of a court thus constituted free from all motives, exempt from all bias, which could even remotely influence opinion on the point of strict right? And yet let me ask emphatically whether this court, being the court of final resort, should not be so constituted that the world should believe and every suitor be satisfied that in weighing the justice of a cause nothing entered the scales but its true merits. Political institutions should be so calculated as not to depend upon the virtues but to guard against the vices and weaknesses of men. It is possible that a judge of the supreme court would not be influenced by the *esprit de corps* and that he would neither be gratified by the affirmance nor mortified by the reversal of his opinions; but, sir, this is estimating the strength and purity of human nature upon a possible but not on its ordinary scale. For myself, I do not hesitate to express the opinion that I would as soon expect the wolf to herd with the lamb, or the eagle to perch with the dove, as to look for a pure administration of justice under such an organization and flowing from such a source, surrounded by the circumstances I have anticipated, and which must inevitably follow. However, in this matter, for one, I feel that I have discharged my duty. And in apology for the length of time that I have trespassed

on the indulgence of the committee, allow me to say that I should not have detained them so long had I not been instructed on this point by several of my constituents in whose opinions I fully concur. Sir, I have only to thank the committee for the patience with which they have heard me.

(During the delivery of this speech the convention took a recess for dinner, Mr. Lovell having suggested to Mr. Doran that he give way for that purpose, but in order to preserve the connection this interruption is not noticed in place.)

Mr. Gale offered an amendment to section 4, to the effect that no judge who had decided a cause in an inferior court should participate in the decision of the same in the supreme court. The amendment was lost.

The question then being upon the amendment of the gentleman from Iowa County, Mr. Bishop said he had listened with great pleasure to the able arguments which had been brought forward on both sides. He had offered the amendment to carry out the wishes of his constituents and to obtain a fair expression of the views of the convention upon the propriety of establishing a separate supreme court. It would be seen that the amendment was in blank and presented that question merely.

Mr. Chase said he had thought that it would be proper to leave this question as far as the argument was concerned wholly to the gentlemen of the bar, and that the farmers and mechanics in the convention should act as a jury after hearing both sides. He would speak, however, of one or two points made by the gentleman from Milwaukee (Mr. Doran). He had been struck with the letter he had read from one of his constituents and what he had declared to be his experience. If he was not mistaken the author of the letter, like the gentleman himself, was one of those who had no interest in the law for themselves and never engaged in it except as an attorney for others. That letter and the gentleman himself said that if the system recommended by the committee were adopted, there would be little or no business in the supreme court. Then let us adopt the system, by all means.

Mr. Doran (interrupting) said the gentleman must have misunderstood him. He had said there would be little or no business because however much suitors might be aggrieved by the decisions of the courts below, having no confidence in the integrity of the su-

preme court they would generally prefer to submit to injustice rather than appeal to such a tribunal.

Mr. Chase said he had so understood the gentleman; and he would repeat, let us adopt that system, for the records of the courts in every county in the territory showed that the costs of the suits exceeded in the aggregate the whole amount collected. Then the less litigation the better, both for the suitor and for the people who had to pay the expenses of the courts. This was a conclusive reason for him to support the system recommended by the committee. It was argued also that unless a separate supreme court were organized now, it never would be. But it would be in the power of the people at any time to establish this separate court, and if they did not, it would be a conclusive evidence that it was not needed. One argument only in favor of a separate supreme court had had any weight with him—and he did not now attach much to that. It was that the nisi prius system would lead to corruption in the judges themselves; that it would place them under a temptation to support one another in their errors. He thought that the regard of the judges for their reputation as jurists would be a stronger motive than their personal pride of opinion, and that consequently not much danger was to be apprehended from that source.

Mr. Doran, in reference to the corruption of judges, said he had full confidence in the present bench, but his objection to the system proposed was that it would place temptations to corruption before them, whereas it should be an object to remove them as far as possible. It was an old and true saying that no man could know how he would act in circumstances in which he had never been placed. And no judge, however honest when there was no temptation to be otherwise, could be sure he would not give way a little when his pride and interest were arrayed against him to that end.

Mr. Lakin had not intended to speak upon the question at all. He had been inclined to prefer a separate supreme court and he was then, more than ever, convinced of its importance. The gentleman from Fond du Lac thought they had better have no courts at all or, at any rate, no laws for the collection of debts, which would amount pretty nearly to the same thing. The gentleman thought the less inducement there was for carrying up cases to the supreme court, the better. That gentleman might see the time when he would have a case to carry up to the supreme court, and perhaps

his farm, or his liberty, or his life might be at stake and depending upon the integrity and ability of the supreme court.

A separate supreme bench had been objected to on the ground of the expense—it was called an expensive system. So was fire insurance an expensive affair, especially if the house never chanced to burn up. A separate supreme court might be expensive to the country, but not to the individual who might chance to need it for the preservation of his rights. He thought gentlemen set too high an estimate upon human nature when they assumed the incorruptibility of judges. He had read of judges who were remarkable for their talents and learning, and at the same time exceedingly corrupt, and he did not know of any reason why judges were not as liable to be influenced by bad motives as any other men. He would appeal to the experience of the legal profession whether a change of venue was ever granted by a judge in perfect good humor, where the ground of the change related to himself. He had never known of an instance; but, on the contrary, it was always granted with reluctance and much of ill feeling.

In cases of appeal to the supreme court, the judge who decided the case below could not but feel a deep interest in the action of the higher court upon his decisions. It was natural that he should. No man wished to have his errors exposed, and if the supreme bench was filled by circuit judges they would all be similarly situated and could not but sympathize with one another. He had read reports of cases in courts thus constituted, in which the judge who decided the case below stuck to his decision with the tenacity of death in the court above, when not a reason was given in support of his decision, because there was no reason which could be given.

It had been said that the system reported by the committee was tolerable—bearable. So it was tolerable, or bearable (he preferred the latter word), but a separate and independent supreme court would be far better.

Mr. Kilbourn said the object then in view, as he supposed, was to test the sense of the convention upon the question whether there should be a separate supreme court or not; but the question could not be tested by the proposition as it then stood, it being coupled with another, viz., whether, if they were to have a separate supreme bench, the judges should be chosen by general ticket or by single districts. Some might be in favor of a separate supreme bench and opposed to the proposed method of electing the judges in case they

were to be chosen at all. He would therefore, with the leave of the convention and of the gentleman who first moved the amendment, withdraw that part of it which had been suggested by himself relating to single districts. Leave was granted and that part of the proposition was withdrawn.

The question was then taken upon the original motion and decided in the negative, 24 to 31.

Mr. Sanders moved to amend the second section by adding after the words "justices of the peace" the words "supreme court commissioners." The amendment was rejected.

Mr. Sanders then moved to amend so as to give the legislature power to provide for the appointment of one or more persons in each county to perform the duties of judge at chambers. He hoped the amendment would not be voted down without due consideration. It seemed to be absolutely necessary to have some officer in each county authorized to do such business. Mr. Dunn thought this amendment would be entirely useless without the one which had just been rejected, for it would not reach the object intended. The question of providing for such an officer did not arise in the committee on the judiciary; but if gentlemen deemed it necessary, he had no objections to it.

The vote by which the first amendment offered by Mr. Sanders was rejected was reconsidered.

Mr. Dunn would say a word in regard to the necessity of this amendment, if the object contemplated by it was desired. The section provided that the judicial power should be vested in a supreme court, district courts, judges of probate, and justices of the peace, and if vested in them alone, the legislature could not vest judicial powers in any other officers. Without the amendment, the same question would arise as had arisen under the organic law of the territory which vested the judicial power in certain officers. The legislature had provided for the appointment of supreme court commissioners, while under the organic law they could perform no judicial act. The same difficulty would occur under the constitution, unless the judicial power was in part vested in such officers.

Mr. Estabrook was opposed to having any such officer. They had once had such an officer and the legislature, no doubt for good reasons, had abolished that office and conferred the powers upon judges of probate, and he thought they would be the most proper officers to be entrusted with such duties, under the constitution.

Mr. Sanders said there were other reasons than the uselessness of the officer why the legislature had abolished the office of supreme court commissioner. Those officers were appointed by the governor, and it would be recollected that at the time we had a governor who was very unpopular with the legislature, and the great object was to knock the sand from under him. They had imposed the duties on judges of probate, but no one was willing to entrust them with any business of importance, and consequently there was practically no officer to transact such business. Mr. Sanders illustrated by several supposed cases the necessity of having some officer to do the business of a judge at chambers.

Mr. Estabrook thought if they were to have such an officer his powers and duties should be defined and limited. He did not know what was meant by a supreme court commissioner—whether he was to act as the agent of the supreme court or of some other. If the object was to confer on him the powers of a judge at chambers, he thought all necessary powers of the kind might be conferred upon judges of probate in accordance with the fourth section of the article.

The question was again taken on the amendment, and it was rejected.

Mr. Kilbourn moved so to amend as to require four of the five district judges to constitute a quorum to do business, and a majority to decide a case. He had called attention to this subject yesterday, but it was not then convenient to offer the amendment. As the article then stood, three would constitute a quorum and two would decide a case. He thought a majority of the court should be necessary to decide a case. Mr. Whiton called the attention of the mover to a difficulty involved in the amendment. Mr. Kilbourn thought he had comprehended the full effect of the amendment. It was true that if the court were divided two and two, the case could not be decided, and until it was decided the judgment of the court below would have to stand; but such a division of the court would be evidence that the case was a very doubtful one and that probably the judgment of the court below ought to stand. The amendment was adopted, 24 to 18.

Mr. Doran moved to amend so that in case the legislature should establish a separate supreme court they should have power to reduce the number of district judges to four, which was agreed to.

Mr. Reymert moved to amend so that in case the legislature should establish a separate supreme court the judges thereof should be elected by single districts, which was disagreed to.

Mr. Kilbourn moved so to amend that the disqualification of a judge from being elected to any other office should not apply to a judicial office. His object was to leave the restriction so that a judge of the district court might be elected a judge of the supreme court. The amendment was adopted.

Mr. Reymert moved an amendment that the legislature should have power to establish courts of conciliation. The amendment was adopted.

Mr. Doran moved to amend the fourteenth section by striking out the word "shall" and inserting the word "may," so as to leave the question of imposing a tax on suits brought into court optional with the legislature, which was agreed to.

Mr. Kinne moved to strike out the fourteenth section. He believed it was wrong to impose a tax on suitors in court. He thought it was a duty which the state owed to its citizens to provide the means of justice free of any tax. They had declared in the bill of rights that every man ought to find in the courts a sure and speedy remedy for all aggrievances. If the citizen was entitled to a remedy, speedy and sure, in the courts, why should it not be free? It appeared to him inconsistent to declare that the citizen ought to find a sure and speedy remedy in the courts for all wrongs done him, and then impose a fine for coming into court at all. It was a part of the civil compact that the individual citizen would not attempt to judge and avenge his own wrongs, but would submit to the adjudications of the courts; and as this arrangement was for the mutual benefit of all, the expenses of maintaining this department of the government should be entirely a public charge. It was not those who resorted to courts, alone, who were benefited. The judicial department was a guard upon the rights of all, and by redressing the wrongs done to some prevented wrongs being done to others, and he could see no more reason why a man should be fined for resorting to the courts, than why he should be imprisoned for the same thing.

Mr. Dunn thought there was a misapprehension as to the object of the section. The object was to raise a fund to help defray the expenses of the judicial system. It was no uncommon thing in the states, and there was really nothing wrong about it. No man could approach a court without costs, and the same arguments used

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against imposing a tax on suitors would apply with equal force against requiring them to pay the fees of clerks, sheriffs, and jurors. If there was any hardship about it, it would fall upon the man who had refused to do justice until brought into court and compelled by due course of law; and the object of the tax would be merely to reimburse the public from the pocket of him who had rendered the expense necessary by his own wrong.

Mr. Whiton spoke against the amendment.

The question was then taken and the amendment rejected.

Mr. Martin moved to amend by striking out several sections and inserting several others providing for a separate supreme court.

Pending the question thereon, the committee rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. Fagan the convention adjourned.

following article of compact between the original states and the people and states in the aforesaid territory was ordained and declared to be forever unalterable, unless by common consent, to wit: "There shall be formed in said territory not less than three nor [more] than five states. If more than three states shall be formed, the one or two states so formed shall be in that part of said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted by its delegates into the Congress of the United States on an equal footing with the original states and shall be at liberty to form a permanent constitution and state government: Provided, the constitution and [state] government so formed shall be republican." And Whereas, In conformity with the ordinance of Congress and article of compact above mentioned four states have been admitted by Congress into the Union on an equal footing with the original states; therefore it is Resolved, That the territory of Wisconsin, being the fifth and only remaining [state] to be formed in said Northwestern Territory, has a right, having formed a republican constitution, to demand admission into the Union with such boundaries as the ordinance and article of compact above mentioned have granted ["guaranteed" in MS] to her. And that so much of the act of Congress entitled "An Act to enable the people of Wisconsin territory to form a constitution and state government and for the admission of such state into the Union" as relates to the boundaries of said state is null and void and in violation of the above-mentioned article of compact."

By Mr. Dunn: "Resolved, That a committee of three be appointed by the President to ascertain and report the expenses of the commissioners named by the committee of this convention, raised on the contest of the seat of the Hon. John O'Connor of Lafayette County, by William S. Hamilton of the same county. And also to inquire into the expenses incurred therein by the sitting member and report the amount which in their opinion he is reasonably entitled to receive therefor."

FRIDAY, JANUARY 21, 1848

Prayer by the Rev. Mr. Read.

The journal of yesterday was read and corrected.

Mr. Scagel asked leave of absence for Mr. Lewis. Leave was granted.

Mr. Kinne presented a petition from sundry inhabitants of Dane County, relative to submitting the old constitution to a vote of the people. Mr. Dunn moved that the same be laid upon the table, which was agreed to.

Resolutions were introduced and read as follows, to wit:

By Mr. Case: "*Resolved*, That the committee on revision and arrangement are hereby instructed to inquire into the expediency of amending the article on legislative, by adding thereto a section requiring the first legislature of this state to meet in joint ballot on the first Monday of the session and ballot for United States Senators, and if they fail to elect such Senators on that day, they shall meet again on the succeeding Wednesday and ballot as above provided until they shall elect such Senators."

By Mr. Biggs: "WHEREAS, By the ordinance of Congress for the government of the territory northwest of the river Ohio, passed July 13, 1787, the following article of compact between the original states and the people and states in the aforesaid territory was ordained and declared to be forever unalterable, unless by common consent, to wit: 'There shall be formed in said territory not less than three nor [more] than five states. If more than three states shall be formed, the one or two states so formed shall be in that part of said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted by its delegates into the Congress of the United States on an equal footing with the original states and shall be at liberty to form a permanent constitution and state government: *Provided*, the constitution and [state] government so formed shall be republican.' And WHEREAS, In conformity with the ordinance of Congress and article of compact above mentioned four states have been admitted by Congress into the Union on an equal footing with the original states; therefore it is *Resolved*, That the territory of Wisconsin, being the fifth and only remaining [state] to be formed in said Northwestern Territory, has a right, having formed a republican constitution, to demand admission into the Union with such boundaries as the ordinance and article of compact above mentioned have granted ["guaranteed" in MS] to her. And that so much of the act of Congress entitled 'An Act to enable the people of Wisconsin territory to form a constitution and state government and for the admission of such state into the Union' as relates to the boundaries of said state is null and void and in violation of the above-mentioned article of compact."

By Mr. Dunn: "*Resolved*, That a committee of three be appointed by the President to ascertain and report the expenses of the commission issued by the committee of this convention, raised on the contest of the seat of the Hon. John O'Connor of Lafayette County, by William S. Hamilton of the same county. And also to inquire into the expenses incurred therein by the sitting member and report the amount which in their opinion he is reasonably entitled to receive therefor."

Mr. Dunn moved that the fifth rule be suspended for the adoption of said resolution now, which was agreed to. The said resolution was then adopted.

Mr. Fenton introduced the following resolution, to wit: "*Resolved, That the use of this hall be tendered to the Rev. John Penman on next Sabbath for divine service.*"

Resolution No. 1 of yesterday was then taken up, when Mr. Lakin moved to amend the same by striking out the words "for and during the session" and inserting "from the commencement of the session to the time when the contested case was decided"; which was accepted by Mr. Fenton as a modification of his resolution.

Mr. Chase did not know under what head the convention could audit the proposed expenditure if the resolution should pass. It certainly struck him that it could not be accounted among incidental expenses; and if it was regarded as coming under the head of pay of members, they would have the same right to pay themselves five dollars a day as to vote per diem to a person who was not a member. He considered that the legislature was the proper body, if any, to vote an appropriation for this purpose. Mr. Beall spoke in favor of the resolution. Mr. Chase had nothing to say about the justice of the case here. That was a matter for the legislature to decide on. It was not competent for the convention to appropriate money to themselves or to any persons they might choose to regard as members. Mr. Judd thought that this would clearly come under the head of incidental expenses. Mr. Doran said that the question arose whether the convention had any right to act in the matter or whether the legislature possessed this right. It seemed to him that the suggestion of the gentleman from Fond du Lac was illustrative of his happy way of getting aside a question by factious propositions. His opinion was that the legislature had nothing to do with the matter. It was not a case to be decided between the contestant and the sitting member, but one of right and justice on the part of the convention.

The resolution as amended was then adopted. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 25; for the vote see Appendix I, roll call 147].

Resolution No. 2, introduced by Mr. Vanderpoel yesterday, was then taken up.

Mr. Vanderpoel said that having introduced the resolution it was proper he should state his reasons for having done so. He thought that where the public servants had public property in their

hands to distribute, there ought to be a full explanation of the manner in which it was distributed. A committee having been appointed to make the proper inquiries, and their report not being satisfactory to the members of the convention, he thought that it was now necessary that a statement of stationery furnished should be made, and if it proved satisfactory, all was right. It was the duty of members to ascertain where the money had gone. That matter was now involved in mystery. As regarded the fact that the superintendent had scattered on the desk of the members that morning a small supply of stationery, he was reminded of the observation of Judge Hale of England, who had on a certain occasion said he was not inclined to go in for bribery because he had not received his share.

Mr. Chase opposed the resolution on the ground that, if it were adopted, the effect might be to bring to the desks of members more stationery such as they had already received, which was utterly worthless, and they were better off without any of it. Let the matter go before the legislature, to whom the superintendent was responsible. If he could not satisfy that body it would hold him to account.

Mr. Sanders thought the resolution ought to be adopted for the purpose of ascertaining and laying before the convention the manner in which the \$220 recently appropriated had been applied.

Mr. Harvey said the question was whether the convention should have the full amount of the \$690 which had been appropriated by the legislature to supply them with stationery, or whether they should suffer the superintendent to charge a great part of it to incidental expenses, the benefit of which they had not received. The members of the convention were not satisfied with the manner in which the outlay had been made and wanted a plain, straightforward account. If the superintendent had acted fairly in the premises, it was for his advantage as well as theirs that it should be known.

Mr. Jackson moved to lay the resolution upon the table, which was disagreed to. And the question having been put on the adoption of the same, it was decided in the affirmative.

The convention then resolved itself into committee of the whole for the further consideration of No. 7, article on the judiciary, Mr. King in the chair.

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The convention then resolved itself into a committee of the whole for the further consideration of No. 7, article on the judiciary, Mr. King in the chair.

The question being on the amendment offered by Mr. Martin in committee of the whole yesterday afternoon, a division was called for and the amendment disagreed to, 19 to 19.

Mr. Martin then moved to amend the article by striking out so much of the fifth section as provided for authorizing the legislature to organize a separate supreme court.

Mr. Dunn said that this amendment met his views of the matter exactly. So far as he was concerned, that provision had been inserted in the article in deference to the opinion of several respectable gentlemen in the convention who were in favor of a separate supreme court and to those who might at some future period desire such a court to be organized. For himself he was in favor of the nisi prius system entire.

Mr. Chase expressed himself in favor of the amendment. He desired to see some system adopted which should be permanent, whether a nisi prius system or a separate supreme court. Which-ever course was adopted the people could change it hereafter if they saw fit by amending the constitution.

Mr. Martin said that the objections which he had submitted yesterday to the article as it now stood dictated the amendment which he had offered last evening. The article as it stood left the whole matter open to the legislature, giving us neither the one thing nor the other. It was singular that members should be in favor of tying the hands of the legislature in every other subject and yet leave them loose on this, the most important of all. Even the legislature itself was not so important a branch of government as the judiciary. That was the bulwark of our liberties. He wished to see some system of judiciary established in the constitution and made as perfect as possible. He considered the convention, by rejecting the amendment which he had last offered, as having decided against a separate supreme court, and in favor of the circuit system. Since the convention had so decided, it was his object in offering the present amendment to carry out and perfect the views of the majority.

If gentlemen would travel through the territory they would find hardly a county in favor of the present system of the judiciary law. This was particularly the case to his own knowledge in the eastern portion of the territory; and he knew of no reason for this feeling of opposition, except the fact that the same judge sitting in the district court and hearing arguments on points of law and deciding on them there sits also in the supreme court. Now in op-

position to four-fifths of the people of the territory, he could not be in favor of the same system as it was proposed to be carried out in the article before the convention. What would be the effect if it were carried into practice? The article proposes to throw into one district the counties of Racine, Walworth, Rock, and Green. In those counties there were probably not more than twelve hundred cases on the docket, of which not more than one-tenth were jury cases. Take the next district, including Milwaukee, Waukesha, Jefferson, and Dane. In these counties the number of cases did not exceed those in the first district, and not over 120 of them were jury cases. In the third district, composed of the counties of Washington, Dodge, Columbia, Marquette, Sauk, and Portage, Washington might give 100 cases a year, Dodge 50, Columbia 40 or 50, and Sauk about the same. The whole district would not exceed 250 or 300 cases, making not over 30 jury trials. In the northern district the result would be the same. The western district might afford as many as the districts which included Milwaukee and Racine. Out of the five judges, therefore, there would be two who would have comparatively nothing to do; not enough to brush up their legal knowledge and render them competent to sit on the supreme court bench—not even on the circuit court. We are to have these five judges quartered upon us and two of them utterly incompetent; for if they were competent when they ascended the bench, they would not have business enough to do to keep them so. They would employ their time in any other business than the official duties which they were elected to discharge.

If the amendment now before the committee prevailed, Mr. Martin said it was his intention to propose another which should diminish the number of judges to not exceeding three—the present number—and give them only *nisi prius* power on the circuits. He resided in the district in which under the present system the courts were held by Judge Miller. Out of a population of 210,000 in the territory, fully 140,000 resided in that district; yet he had never learned that Judge Miller had too much to do. Whenever he was in his county he seemed to be very much at his ease. If there was any part of his district in which he was very much occupied it was Milwaukee. In the remaining portions of his district he believed he could hold two terms a year in each county without being overworked. Again, it was to be remembered that in municipal districts municipal courts might be established. Two years would not pass

by before there would be such a court in Milwaukee, with judges who would possess all the powers of circuit judges so that the circuit judge would have nothing to do in that city.

Mr. Martin said he had made these remarks not with a view of finding fault with the report of the committee. His amendment of yesterday was offered for the purpose of clearing away difficulties which had arisen in the discussion and to settle the question on a firm basis. He wished to see no such scenes in the legislature of the new state as had been enacted in Kentucky during the prevalence of the old and new court parties, and such as would be certain to arise under the proposed system here—one legislature of one party establishing courts and appointing judges, and another legislature elected by another party throwing them down and building up new ones. It had been decided on this floor by an emphatic vote that we were to adopt the nisi prius system; he wished to see that system, then, made as perfect as possible, and with a view to that object desired to lessen the number of judges. If there were too many of them, those who had little or nothing to do officially would occupy their time in other pursuits, and we should find them engaged in speculations, trading horses or buggies and selling town lots. Let us, if we are to adopt the nisi prius system, establish it as firmly and in as much perfection as possible, so that no contingency shall make it necessary to change it. It was easy to foresee what the business of this territory was to be for the next ten years. Let us then provide for it. If the constitution was good for anything it ought to last for ten years. Let us make our judiciary system as perfect as possible, and if even in spite of the utmost caution some trifling error should creep in, that will be a small difficulty compared with leaving the matter open to the legislature.

Mr. Beall spoke.

Mr. Dunn said that having yesterday discussed the merits of the fourth section of the article he had no intention now to harass the committee with further arguments. He must, however, make a few remarks in reply to the gentleman from Brown (Mr. Martin). He could not but regard himself as having been decoyed into yielding his assent to the amendment proposed by that gentleman. When he first proposed it, he (Mr. Dunn) thought it was offered in good faith and with the intention of perfecting the article. But in the course of his remarks he (Mr. Martin) had admitted that it was only the entering wedge for another amendment which would de-

by before there would be such a court in Milwaukee, with judges who would possess all the powers of circuit judges so that the circuit judge would have nothing to do in that city.

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stroy the effect of the whole system. He was ready to meet Mr. Martin on his arguments in support of that amendment, but considered while the present proposition was before the convention it would be out of place to do so. If the first amendment should prevail, he would meet the member from Brown on the grounds which he had assumed in reference to the second.

Mr. Judd spoke. Mr. Whiton made some remarks.

Mr. Martin: I find all those gentlemen who have spoken in favor of the nisi prius system have an extraordinary facility of dodging the question. None of them come up to it and none of them have answered a very simple argument which I addressed to them. The gentleman from Dodge (Mr. Judd) has charged me with blowing hot and blowing cold with the same breath. This is the very charge which I might make against him and other gentlemen who have supported the same views. I said yesterday and I repeat today the arguments which have been used here in favor of the nisi prius system and against the system proposed in the article, for in that article such a system is not proposed—and we are told that the legislature shall establish a separate supreme court. They agree in favor of one system and tell us we shall have another. I stated when I was up before that I was in favor of a separate supreme court giving the judges nisi prius powers, but in this the convention once overruled me. The convention having decided that question, I did not wish to bring it up again. All that I intended by the amendment which I proposed was to perfect the nisi prius system under the article as reported—and I stated that if we had five judges, two of them would be incompetent. That part of my argument gentlemen have not seen fit to answer. The judges in two of the districts will not have official business sufficient to occupy one-tenth part of their time, and will fill up the intervals with other occupations. Should either of them be a physician, he would have ample opportunity to practice his profession; if a lawyer, he would be debarred from so doing.

In perfecting the system which has been agreed to by the majority, I stated that I wished to reduce the number of judges. But that proposition is not now before the committee. The present amendment is merely the first step toward it.

I might bring forward a great many arguments against the proposed system. It might be used as an argument that with five

judges on the bench the judge who tried the case below would not be allowed to try it above, and the trial would be confined to the four other judges brought from other parts of the state who have not the same acquaintance with the details of the case. It provides in fact for the appointment of judges, not by the governor, not by the legislature, but by other districts to try causes brought up on appeal before them from the decision of the judge in the district where they were first tried. My plan would be to restrict the number of judges to three and give them business and salary sufficient to make the office an object to any man. Then, on trial in the circuit courts, whenever any question of law arises, let the point be reversed and not argued before the circuit court. The judge could then come upon the supreme bench perfectly free to hear and to decide. In this manner we can establish a competent nisi prius system and one which will insure good judges. We shall have everything to make it an excellent system, with many arguments and examples in favor of it. For if we turn to the adjudications under this system so organized in other states, we shall find decisions which would do honor to any country. But the system as it is now presented in the article before the convention is confused, and it is left to the legislature to determine whether to let it remain or strike it down.

I am not strenuous in favor of either system; whichever the majority shall determine on I shall support with all my heart. But whichever is agreed on, let us perfect it in the constitution and leave nothing unsettled or in doubt.

Mr. Lovell said that in some remarks he had made yesterday he had expressed his wish to see the system fixed and he would support the amendment on that ground. The settlement of the question of a separate supreme court ought not to be left to the legislature. It was intrusting an unsafe power to such a body and one which might and in all probability would be used for political purposes.

He had been gratified at hearing the gentleman from Lafayette (Judge Dunn) say that he approved the amendment; and was equally grieved to hear him say afterwards that he would oppose it as an entering wedge to destroy the nisi prius system. He did not so regard it, but rather as a step towards perfecting the system as reported by the committee. But if it was an entering wedge, he

feared no such wedge. He hoped if such a wedge was needed, it would be used. There was no fear that the convention would be entrapped into the adoption of provisions which they did not want.

All the arguments which he had heard on this subject—all at least which could be dignified by the name of arguments—had been in favor of the *nisi prius* system. He had supported that system and had opposed the amendment offered by the gentleman from Iowa (Mr. Bishop) and now supported the amendment of the gentleman from Brown (Mr. Martin) because it settled the principle that the judges should perform *nisi prius* duties. The arguments which were used to show the excellency of this system were to him perfectly conclusive. No one could be a good mechanic unless he was diligent in learning his trade, nor a good artist unless he spent much time in studying his profession; neither could any man be a good judge unless he was constantly practiced in the duties of his office. How was it possible for men to become competent judges who would be employed only four or at the utmost six weeks in the year upon the bench? It would not be pretended that they would employ the rest of their time in thought or study.

The judges under the *nisi prius* system were brought nearer to the people and were better acquainted with the business which would spring up in court. They were more practical men and better enabled to decide on the supreme bench from the knowledge they acquired on the circuits. On the other hand, the supreme bench made better circuit judges. They would hear arguments on points of law in the supreme court—hear arguments of the ablest counsel—and decide on them after calm reflection, and they could bring the knowledge thus acquired to bear in the circuit courts.

The palmiest judicial days of the state of New York were under the *nisi prius* system. The bench was then adorned by such men as Kent, Spencer, Thompson, and many others. No objection was then raised to the *nisi prius* system. What was the course adopted by these judges? They required the lawyers when important points arose to reserve them, so that time could be had to examine and decide them. Such would always be the case where we had competent judges. The difficulty did not exist so much in the danger of having corrupt ones. If we should have any incompetent judges, the people would cry out against them, not against the system. If, then, it was true that the experience of sixty years in New England, of fifty in the supreme court of the United States, of twenty in the

state of New York, and of centuries in England had confirmed the excellence of the system, let us adopt it and fix it here. In the state of New York this system had been tried up to the year 1820. The business of the courts was then crowded so much that they organized a separate supreme court. Any lawyer would admit that the instant that court was organized the decisions as they are to be found in the reports grew worse and worse. Johnson's reports are good law all over the world where the common law is known. Not so of Cowan's and the later reports. In Massachusetts, where the *nisi prius* system is continued, the reports have maintained a uniform excellence. Take the example of Illinois. Although there the *nisi prius* system was deformed and weakened by the too great number of the judiciary, yet ask all gentlemen who are informed on the subject and they will tell you that the decisions improved in character the very moment the separate supreme court system was abandoned. Under that system the people of Illinois had three judges rusting upon the bench. One of these was Judge Smith, whose opinions were not much regarded then, but after he had been on the circuit bench for two years they became valuable.

If this system is correct, let us engraft it in the constitution and not leave it in the power of the legislature to deprive us of its advantages. It was but the other day when the article on education and school funds was before the convention that the gentleman from Rock (Mr. Whiton) said that if the appointment of superintendent of schools was left to the legislature it would be thrown into the very hotbed of politics. Will not the same argument hold in its fullest force against throwing the decision of this question into the same hotbed opposition. I believe in tying up the legislature so as to confine them to their legitimate business of making laws and in confining each branch of the government within its proper bounds.

It had been suggested by the gentleman from Brown (Mr. Martin) that with five judges we should have two who from want of practice would be incompetent. Whether they would be so or not, they might be so, and the legislature would be besieged year after year to increase the circuits. If there were five or six persons who thought they might be elected to fill the new office, they would all join influences in besieging the legislature for the increase. Suppose the circuits are increased. Then all who desire a separate supreme court will besiege the legislature for that, and they will obtain it; for every man who has aspirations to a seat on the su-

state of New York and of centuries in England had confirmed the excellence of the system, let us adopt it and fix it here. In the state of New York this system had been tried up to the year 1830. The business of the courts was then crowded so much that they organized a separate supreme court. Any lawyer would admit that the instant that court was organized the decisions as they are to be found in the reports grew worse and worse. Johnson's reports are good law all over the world where the common law is known. Not so of Cowan's and the later reports. In Massachusetts, where the nisi prius system is continued, the reports have maintained a uniform excellence. Take the example of Illinois. Although there the nisi prius system was destroyed and weakened by the too great number of the judiciary, yet ask all gentlemen who are informed on the subject and they will tell you that the decisions improved in character the very moment the separate supreme court system was abandoned. Under that system the people of Illinois had three judges resting upon the bench. One of these was Judge Smith, whose opinions were not much regarded then, but after he had been on the circuit bench for two years they became valuable. If this system is correct, let us engrave it in the constitution and not leave it in the power of the legislature to deprive us of its advantages. It was but the other day when the article on education and school funds was before the convention that the gentleman from Rock (Mr. Whitton) said that if the appointment of superintendents of schools was left to the legislature it would be thrown into the very hotbed of politics. Will not the same argument hold in its fullest force against throwing the decision of this question into the same hotbed of opposition. I believe in tying up the legislature so as to confine them to their legitimate business of making laws and in confining each branch of the government within its proper bounds. It had been suggested by the gentleman from Brown (Mr. Martin) that with five judges we should have two who from want of practice would be incompetent. Whether they would be so or not, they might be so, and the legislature would be besieged year after year to increase the circuit. If there were five or six persons who thought they might be elected to fill the new office, they would all join influences in besieging the legislature for the increase. Suppose the circuit are increased. Then all who desire a separate supreme court will besiege the legislature for that, and they will obtain it; for every man who has aspirations to a seat on the su-

preme bench will join in the application. If the nisi prius system is to be adopted, let it be firmly fixed in the constitution. If not, let us submit to the people some other system which may be deemed better. If it was provided that the circuits might be reduced to four, the legislature would be operated upon to keep it as it was. They could not alter it if they would, for here comes in another provision that they cannot alter the circuits so as to remove any judge. The provision which classes the judges so that one goes out of office each year increases the difficulty.

The proverb had been used as an argument by the gentleman from Fond du Lac (Mr. Beall) that "sufficient to the day is the evil thereof—take no heed for the morrow." This was a good principle if applied to a man's individual affairs or his religious sentiments, but a very bad one if applied to matters of government. The members of the convention were sent here to "take heed for the morrow." They must settle the provisions of the constitution on a sure and permanent basis, so that justice may be done freely and without denial—promptly and without delay.

Mr. Doran called the attention of the committee to the remarks of the gentleman from Fond du Lac (Mr. Beall) wherein he held the friends of a separate supreme court responsible for the arguments and statements of the gentleman from Brown (Mr. Martin). If the remark had any reference to himself, it did not apply. He had not supported the amendment offered by the gentleman from Brown; and as that gentleman did not see fit yesterday to come out distinctly in favor of a separate supreme court, he did not think that those who did so should be held responsible for that gentleman's arguments. As regarded the remarks of the gentleman from Racine (Mr. Lovell), they approximated so closely those of the gentleman from Brown, that he held them in some distrust. They reminded him of the remark of the old Trojan: "*Timeo Danaos et dona ferentes*." He held it to be a maxim, when gentlemen proposed to give evidence of facts, that they should give not only a part but the whole truth. Now as regarded the evidence which had been brought forward of the state of New York, gentlemen forgot to state that when the nisi prius system prevailed there and the judiciary bore the high character that had been justly attributed to it, there was a court of errors above it, where sat the judges of the supreme court, the chancellor, and other dignitaries. If they would give us the system with that addition, he would agree to it;

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Mr. Doten called the attention of the committee to the remarks of the gentleman from Fond du Lac (Mr. Beall) wherein he held the friends of a separate supreme court responsible for the arguments and statements of the gentleman from Brown (Mr. Barlow). If the remark had any reference to himself, it did not apply. He had not supported the amendment offered by the gentleman from Brown; and as that gentleman did not see fit yesterday to come out distinctly in favor of a separate supreme court, he did not think that those who did so should be held responsible for that gentleman's argument. As regarded the remarks of the gentleman from Racine (Mr. Javelle), they approximated so closely those of the gentleman from Brown, that he held them in some distrust. They reminded him of the remark of the old Trojan: "Troy's Danes are done for ever." He held it to be a maxim, when gentlemen proposed to give evidence of facts, that they should give not only a part but the whole truth. Now as regarded the evidence which had been brought forward of the state of New York, gentlemen forgot to state that when the nisi prius system prevailed there and the judiciary bore the high character that had been justly attributed to it, there was a court of errors above it, where sat the judges of the supreme court, the chancellor, and other dignitaries. If they would give us the system with that addition, he would agree to it;

but when it was proposed that the same judges should sit in the courts below and in the court of highest appeal above, he could not sanction the system. Mr. Doran said that all the arguments which he heard on this floor in favor of the nisi prius system described it as the English system. Now he thought he had the other day fully established that the system proposed here bore no analogy to the system carried out in England.

Mr. Chase regretted that even on the offering of an amendment gentlemen found it necessary to go into long arguments in favor of the separate supreme courts, or the nisi system. There was now a plain and simple proposition before the committee: whether it was expedient to leave the power in the legislature to establish a separate supreme court, or not. He supposed that five judges would be amply sufficient to discharge all the judicial duties of the new state for ten or fifteen years to come. If so, was it expedient to allow the legislature to tamper with the system that might be established, before the expiration of that time? He thought the proposed amendment would improve the article and place the question at rest so that the people would know on what system the judiciary of the state was established.

Mr. Judd made some remarks.

The question being taken on the amendment proposed by Mr. Martin, it was decided in the negative—19 voting in the affirmative and 23 in the negative.

The committee then rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. King the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The convention resolved itself into committee of the whole for the further consideration of No. 7, article on the judiciary, Mr. King in the chair.

Mr. Vanderpoel offered an amendment to section 23, providing that the legislature should appoint a commissioner to revise the rules of practice, forms, etc., in courts of law. The amendment was adopted.

Mr. Doran moved to strike out section 19. He said the article abolished the office of master in chancery. He wished by this mo-

tion to ascertain the reasons of the committee for providing for the abolition of that office.

Mr. Whiton explained that the duties of that office so far as related to taking testimony would be performed by the courts, and so far as related to selling land, etc., by the sheriff; so that officer was unnecessary.

Mr. Doran said that so far as the selling of land was concerned the provision might be well enough, but as to the taking of testimony he thought it was not. If the courts were to be required to take all testimony where masters of chancery had done it heretofore, it would cause a large additional expense. He had known suits where a master in chancery was employed five weeks in taking testimony. The number of judges would have to be increased fourfold to enable them to do all this, and the expense increased proportionally.

Mr. Whiton spoke.

The motion did not prevail.

Mr. Lovell offered an amendment to section 15, to strike out the words "coextensive with the county in which they are elected" and insert "such" jurisdiction, etc., "as shall be prescribed by law." Mr. Lovell said he offered this because he thought it would create difficulty to fix the jurisdiction of justices absolutely coextensive with the counties in which they held their offices. Another difficulty would be that injustice might be perpetuated under it. A debtor might be sued in a town remote from where he lived, for the mere purpose of harassing him. He had known instances of this kind. He thought the extent of the justices' jurisdiction should be left to the legislature.

Mr. Doran said the amendment could be supported on different grounds with wise propriety, e.g. the convenience of attorneys. If the debtor and creditor resided in different towns, the former would have to go to the town where the latter resided to sue him, or if he sued him in the town where he resided, the latter would have to come there. Which should be done? He thought the creditor should have the right to sue in the town where he resided, not have the burden thrown upon him of going to the town where the debtor resided to commence suit.

Mr. Lovell said that the gentleman had misunderstood him, and it was singular he should have done so. His amendment had nothing to do with the convenience of attorneys. It did not provide

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Mr. Whitton explained that the duties of that office so far as related to taking testimony would be performed by the courts, and so far as related to selling land, etc., by the sheriff, so that office was unnecessary.

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Mr. Whitton spoke.

The motion did not prevail.

Mr. Lovell offered an amendment to section 18, to strike out the words "coextensive with the county in which they are elected" and insert "such" jurisdiction, etc., "as shall be prescribed by law." Mr. Lovell said he offered this because he thought it would create difficulty to fix the jurisdiction of justices absolutely coextensive with the counties in which they held their offices. Another difficulty would be that justice might be postponed under it. A debtor might be sued in a town remote from where he lived for the mere purpose of harassing him. He had known instances of this kind. He thought the extent of the justice' jurisdiction should be left to the legislature.

Mr. Doran said the amendment could be supported on different grounds with wise propriety, e.g. the convenience of attorneys. If the debtor and creditor resided in different towns, the former would have to go to the town where the latter resided to sue him, or if he sued him in the town where he resided, the latter would have to come there. Which should be done? He thought the creditor should have the right to sue in the town where he resided, not have the burden thrown upon him of going to the town where the debtor resided to commence suit.

Mr. Lovell said that the gentleman had misunderstood him, and it was singular he should have done so. His amendment had nothing to do with the convenience of attorneys. It did not provide

that the creditor should not sue in the town where he resided, when the debtor resided in another town. But to allow a creditor to sue in some remote town where neither of the parties resided, for the mere purpose of harassing the debtor, was putting an instrument of oppression in the hands of the former. Mr. Doran did not conceive that any man would ever be foolish enough to bite his own nose off to spit it at his enemy. In the case supposed, the creditor would make himself as much trouble as he did the debtor. He did not believe any such case would ever arise.

Mr. Judd spoke.

The amendment was adopted.

Mr. Martin offered an amendment to the effect that the judges first elected should remain in office five years before a separate supreme court should be created. The amendment was adopted.

Mr. Kilbourn moved to amend section 19 by substituting the word "prohibited" for "abolished."

Mr. Lovell suggested, as an amendment, to insert the words "creation of," so that the clause would read: "the creation of the office of master in chancery is hereby prohibited." The amendment was accepted, and the original amendment adopted.

Mr. Kilbourn offered an amendment, to add a new section providing that there should be an election of judges in June next, and that they should come into office in August, etc. The amendment was not adopted.

The committee then rose and by their chairman reported the article back to the convention with sundry amendments.

The question being on concurring in the amendments of the committee, and a division having been called for, the question was put first upon concurring in the first amendment, which was to amend section 4 by prefixing the following words: "For the term of five years and thereafter." And the question having been put upon the adoption of the same, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 50, negative 9; for the vote see Appendix I, roll call 148].

Mr. Bishop moved a reconsideration of the vote just taken. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 32, negative 28; for the vote see Appendix I, roll call 149].

Mr. Harvey remarked that he had voted for the reconsideration merely out of courtesy to those gentlemen who had voted under a

misapprehension; he was in favor of the amendment. Mr. Doran said he preferred the article as first reported by the committee, rather than as it was amended in committee of the whole. If we were not to have a separate supreme court established now, it should certainly be left in the hands of the people to establish one when they deemed it necessary and proper. Why put off the possibility five years, till an evil system is fastened firmly upon us? He could see no reason for it. Mr. Beall spoke.

The question was then put upon concurring in the first amendment of the committee, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 41, negative 21; for the vote see Appendix I, roll call 150].

The second and third amendments, which were: "Second. Amend section 4 in the second line by striking out the words 'a majority' and inserting the word 'four.'"

"Third. Add to section 4, 'And whenever the legislature may consider it necessary to establish a separate supreme court, they shall have power to reduce the number of circuit court judges to four and subdivide the judicial circuits, but no such subdivision or reduction shall take effect till after the expiration of the term of one of the said judges, or till a vacancy occur by some other means,'" were then severally concurred in.

The question then being upon concurring in the fourth amendment, which was to amend section 7 by striking out in the seventh line the words "two years" and inserting the word "year"; also by striking out in the eighth line the word "ten" and inserting the word "five,"

Mr. Chase said he hoped the amendment would be concurred in. It was by far the most important one made in committee. As the vote by which it had been adopted had been a close one, and he noticed that several members were not in their seats, he moved a call of the house.

Mr. Dunn said he would not detain the convention with any remarks. He had said before all he had to say on the subject. He hoped the amendment would not be concurred in.

Mr. Lakin said he was opposed to the amendment as it stood and in favor of a medium ground. (He suggested an amendment fixing the terms at seven years and providing that the term of one judge should expire in three years, and one annually thereafter.)

Mr. Beall spoke.

Mr. Reed preferred the amendment to the amendment and thought his constituents would prefer it. They were opposed to the elective judiciary, but if that were adopted they were in favor of

long terms as the only safeguard from the evils which they apprehended from it. He preferred seven rather than five years.

Mr. Chase, as to the remark about a medium ground, said that the ground proposed by the gentleman from Grant was a medium not between extremes but between a medium and an extreme. He thought five years was the proper medium.

Mr. Cole (of Grant) said he had made up his mind not to say anything upon the subject of the judiciary, having full confidence in the committee who had that subject in charge, but he felt bound by a sense of duty to oppose this amendment. The principal recommendation of this proposed change in the report of the committee to the convention seemed to be that it was new and "progressive." For his part he was not one of the medium "progressive" kind and had no desire to be esteemed one of that school. He considered it a merit in a statesman to listen to experience, as it was in a sailor in unknown seas to consult the charts of those who had gone before him. He considered this proposition of an elective judiciary with short terms as one of the most leveling of this leveling age, and it leveled downwards. It was designed to level the judiciary down to the ordinary meanness and corruption of party strife. He knew it had been said that the elective principle should be applied to the judiciary as well as to the other departments of government, and he had little hope of convincing those who used this coy that it was not so. But still he thought he could see a radical difference between the duties of a judge and a representative which made it proper that the latter should be under the immediate control of the popular will, and the former not. Policy and practical expediency were different in different states, and sections, and cities. They were always debatable, and there was no such thing as absolute right in regard to them. Whether a new county should be erected, or a bridge built, or banks established—on such questions it was very proper that the public will should be absolute and the representative a mere tool for carrying it out. But the law according to its perfect idea—the power which ascertains and administers justice between man and man—was not one at Athens, one at Rome, and one at Corinth, but everywhere the same, immutable and eternal. It should not be at all subject to the fluctuations of popular will nor in any way affected by the different power and political importance of those whose rights might be adjudicated upon. The very object of the advocates of short terms was to bring the judi-

ciary under the immediate control of the popular will. That was the very reason why he opposed it. True, gentlemen had contended that good judges would be reëlected and that the best judicial talent would be continually called out. But he did not believe this. He had watched the workings of the elective spirit the past few years and he thought it had already lowered the judiciary. As parties were organized it was seldom or never that the personal character and abilities of the candidate were the principal matters passed upon at the election, and it was contrary to the elective principle to make personal qualifications the test in political officers. The officers elected were regarded as the mere agents of the electors to carry out their views. Thus we should have party judges—Whigs, Democrats, or Abolitionists—and their political, not their personal, character or judicial qualifications would be the question voted on by the people. Availability would be looked to as in other cases, and the office would be given as a reward for political services. The office of judge would in short be reduced to the same situation as all elective offices are now. All these evils—all the evils feared from the experiment of an elective judiciary—would be greatly aggravated by the amendment now proposed, establishing short terms. If experience was to be regarded at all, it was opposed to the whole project. It had been tried in Mississippi, and the decision of her supreme court in favor of repudiation had made not only that state but the whole Union a byword of reproach all over the civilized world. This example was enough to show the evils of having public opinion represented on the bench.

Mr. Cole said he had not intended to go into any elaborate argument but only to express his fervent hope that the amendment so fraught with evil might not be concurred in.

Mr. Larrabee corrected the gentleman from Grant in regard to repudiation in Mississippi. That gentleman had spoken of the decision of the supreme court of that state in regard to the constitutionality of the state bonds as an instance of the manner in which an elective judiciary was warped by popular feeling. He was wholly mistaken as to the fact. The decision was directly against the current of popular will at the time, and the opponents of it had always had a large majority in the state.

Mr. Gale said that since the report of the committee had been made, he had received a number of letters from his constituents—lawyers and others—upon the subject, and they were unanimously

in favor of a term of five and opposed to one of ten years. Some of the opponents of the term of five years had been bold enough to avow that they were opposed to the elective judiciary in any form. He had hoped that these would have tried to argue the point and to abide its fate, but they had not done so. There was no effective opposition to the elective principle. He thought then that those who were in favor of the system should be allowed to arrange its details and that the enemies of it should not attempt to burden it with amendments which would make it unpopular and less likely to succeed.

The President decided that the amendment of the gentleman from Grant in the form in which it stood was not now in order.

Mr. Chase moved a call of the convention, which was ordered, and Messrs. Biggs, Colley, Fox, Prentiss, Rountree, and Secor reported as absent.

Mr. Wheeler moved that Mr. Fox be excused from his attendance, which was agreed to; Mr. McDowell moved that Mr. Biggs be excused from his attendance, which was agreed to; Mr. Foot moved that Mr. Colley be excused from his attendance, which was agreed to; Mr. O. Cole moved that Mr. Rountree be excused from his attendance, which was agreed to; Mr. Judd moved that Mr. Prentiss be excused from his attendance, which was agreed to. Mr. Estabrook moved that all further proceedings under the call be dispensed with, which was agreed to.

Mr. Kilbourn moved to amend the amendment by striking out the word "five" and inserting the word "eight."

Mr. Chase asked of the gentleman from Milwaukee, as he had on a former occasion, to withdraw his amendment and allow a fair vote to be taken on the proposition for five years.

Mr. Kilbourn said he would like to accommodate the gentleman, but in the present circumstances he did not feel bound to make way for him. He preferred to obtain an expression of the convention on the term of eight years first. He was strongly of the opinion that the term of five years was too short to secure on the bench the class of persons that was desired. The danger, as he apprehended it, was that good men could not be induced to accept the office. How would the five-year term operate at first? One judge would continue in office but one year, one two years, one three years, etc. Now, was it probable that five good lawyers could be found willing to break up their practice and go on to the bench with but one chance in five of holding the office five years, and a very probable chance of holding it but one? This difficulty—this effectual

bar to the probability of getting good judges—met us at the very organization of the government. If the elective system could work well at all, it could not, so arranged. He hoped to see it so arranged to prove that the system would work well. It was one thing to select good men, and quite another to get them to accept the office when it involved a sacrifice of their best interests. The medium ground was the proper one under the circumstances, but five years was not a medium; it was the lowest possible extreme, with an annual election of one judge.

Mr. Gale, in answer to the remark that able lawyers could not be induced to leave their practice to go on to the bench with a term of five years and a salary of \$1,200, and that it would be a positive sacrifice for them to do so, said he did not believe there were ten attorneys in the territory now making that sum by their practice, and it was a fact, too, that those who were making the most were not those who were most fit to be judges.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 40; for the vote see Appendix I, roll call 151].

The question was then put upon concurring in the amendment of the committee, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 39, negative 21; for the vote see Appendix I, roll call 152].

The fifth, sixth, and seventh amendments, which were: "Fifth. Amend section 10 by striking out in the third line the word 'other' before the word 'office' and inserting after the word 'trust' the words 'except a judicial office during the term for which they are respectively elected'; also by striking out in the fourth line the words 'judge of the supreme and circuit court' and inserting 'a judicial office.'"

"Sixth. Amend section 14 by adding: '*Provided, however, That the legislature shall have power to abolish the office of judge of probate in any county and to confer probate powers upon such inferior court as may be established in said county.*'"

"Seventh. Amend section 15 by striking out in the seventh line 'co-extensive with the county in which they are elected in such cases' and inserting before the word 'civil' the word 'such,'" were then severally concurred in.

The question then being upon concurring in the eighth amendment, which was to strike out section 16 and substitute the following: "The legislature shall pass laws for the regulation of 'tribunals of conciliation,' defining their powers and duties. Such tribunals may be established in and for any township and shall have power to render judgment, to be obligatory upon the parties when they voluntarily submit their matter in difference for arbitration and agree to abide the judgment or assent thereto in writing," Mr. Sanders

moved to amend the amendment by striking out the word "shall" and inserting the word "may," which was agreed to. And a division having been called for, there were 20 in the affirmative and 16 in the negative. The amendment as amended was concurred in.

The ninth amendment, which was to amend section 18 by striking out in the first line the word "shall" and inserting the word "may," was then concurred in.

The tenth, eleventh, and twelfth amendments, which were: "Tenth. Amend section 18 by striking out the words 'shall be paid into the treasury of the state.'

"Eleventh. Amend section 19 by striking out the word 'abolished' and inserting the word 'prohibited.'

"Twelfth. Strike out section 21," were then severally concurred in.

The question then being put upon concurring in the thirteenth amendment of Mr. Vanderpoel, which was: "Add the following, to stand as section 23: 'The legislature at its first session after the adoption of this constitution shall provide for the appointment of three commissioners whose duty it shall be to inquire into, revise, and simplify the rules of practice, pleadings, forms, and proceedings; and arrange a system suitable to be adapted to the courts of record of this state; and to report the same to the legislature at such time as may be prescribed, subject to their modification and adoption; and then their commission to cease, unless otherwise provided for by the legislature,'" Mr. Harvey moved to amend the amendment by substituting the following: "Section 23. The legislature, at its first session after this constitution shall take effect or at the next subsequent session, shall provide for the appointment of three commissioners whose duty it shall be to revise, simplify, and arrange the statute laws; and to revise, reform, simplify, and abridge the rules of practice, pleadings, forms, and proceedings of the courts of record of this state; and to suggest and report to the legislature such amendments as they may deem proper; which amendments the legislature may adopt, or modify and adopt, and alter from time to time as in their judgment the public good may require."

Mr. Harvey proceeded at some length to comment upon the points of difference between his substitute and the amendment of the committee. The margin of one year he thought preferable, in view of several considerations mentioned, especially that it would increase the probability that our commissioners might avail themselves of the labors of the commissioners appointed under a similar provision of the new constitution of the state of New York. The substitute included provision for revising and reforming, by the same commissioners, our scattered, crude, and incongruous statute laws, and finally it enjoined upon the legislature the duty of perfecting a thorough legal reform, if one set of commissioners failed to accomplish it.

Mr. Harvey continued his remarks on the general subject, in substance as follows: I am aware, Mr. President, that this convention have become tired of delay in the passage of this article—that their patience has become well nigh exhausted by attention to the debates, propositions and counter propositions, amendments, and amendments to amendments, which have impeded every step in our proceedings since this article came up for discussion, illustrating in number and relative importance the idea of infinite gradation in animal existence expressed in the couplet

And even fleas have still less fleas to bite 'em,
Thus they succeed ad infinitum.

But I should do injustice to the sense I entertain of the importance of that work of judicial reform, which it is the aim as well of the section reported by the committee as of the substitute I have had the honor to present to provide for, did I fail to improve this occasion to urge some of the considerations which weigh on my own mind in favor of this measure, if I did not urge the necessity I conceive to exist for inserting a provision in the constitution positively enjoining upon the legislature the duty of early attention to this subject. Without a mandatory provision I have little faith that anything effectual will be done for many years. Legislatures are prone enough to those petty innovations which make the capital of small politicians; but in projecting and carrying out radical reforms—such as go to turn back the current of power and privilege, constantly setting from the many towards the few—their action is ever too slow for the popular impulse. Especially do I fear to await voluntary legislative action in this reform, which is supposed to make against the interests of a large profession, members of which generally hold a commanding influence in our legislative bodies. Had the legislature of New York been prompt in remedying the gross evils felt and acknowledged to exist in the judiciary department of the government of that state, the expense and trouble of holding a convention to revise their constitution, and the elections accompanying or resulting from its convocation, with the cost and vexations growing out of the delay of a needed reform, would probably have been saved to the people of that state.

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The grand object of providing a judiciary department of government is, without doubt, Mr. President, as is the aim of all litigation, the redress of the wrongs and enforcement of the rights of

the citizen. But the administration of justice in our courts has become so widely diverted from its legitimate intent, that mere secondary questions of forms of procedure have assumed the first importance; and these grand objects, if not completely lost sight of, have been shoved far into the background. Pleadings at law are matters of so much technical nicety that the party seeking the enforcement of a right or the redress of a grievance by our courts finds his way to the court and jury a constant succession of pitfalls and traps, and a single false step is fatal to his suit. A broad and barren waste of technicalities and legal fictions, the labyrinths of which can never be threaded by the uninitiated, separates the people from justice; and the party seeking a remedy at law, like the adventurer in search of the magnetic poles of the earth, brings back no result of his weary search save the journal of the route he has traveled, the dangers he has avoided, and perhaps a chart laying down the rock on which he finally made shipwreck. For these he pays his fortune, his prospects, and his hopes, for no benefit save to the profession who make such matters their study. Every other department of our national and state government is marked with a distinctive national character—is free, is American; but the structure of our courts, the forms of pleadings and rules of procedure in those courts are copied to a great extent from the mother country. English form books are the guides of our lawyers; English maxims, rules, precedents, and decisions control greatly the administration of justice. We have not even the rules and practice, purged and pruned by recent reforms, now used in the courts of England; but antiquated, wordy, and senselessly specific forms, the relics of a more barbarous age, devised in times when the ignorance of jurors rendered strict and specific forms necessary, reducing the questions at issue to nice and comparatively unimportant points, and subsequently modified and given shape at that period when scholastic pedantry overran and perplexed with its arbitrary rules and pompous verbiage every department of science. Why, sir, even our deeds of conveyance, as well as the forms of pleadings in our courts, and to a minor extent the composition of our statute laws, run into the same extravagances. All the nearly synonymous words and phrases in which our language abounds are heaped together, and the mass repeated and reproduced with but slight variation, till the simple idea is lost in a mist of phraseology, when a single word would clearly and explicitly convey the sense.

Then we have five or six particular forms of action at law, each having its special and technical form of pleadings. Under these divisions are arbitrarily classified most of the wrongs arising in human transactions. A proper classification often defies the analysis of the most experienced practitioners and judges in our courts, and yet a wrong classification or the calling of an action by a wrong name is made fatal to the cause of the suitor seeking justice. The pleadings under these separate forms are filled with false allegations and legal fictions. These may bear a certain conventional relation to a truth they are supposed to represent, and that relation may be tolerably well understood by the profession; but to the great mass for whose relief courts should be designed they are literal falsehoods. Hence it comes that lawyers are the only persons who have any knowledge whether the wrongs of the citizen are such as the courts can afford redress for, and the only persons who can obtain the least measure of justice from these courts. We can expect no reform so long as the people make no effort to pierce the veil of mystery that now surrounds the administration of justice and that mystery is profitable to those initiated within its folds. The forms of pleadings in our courts will never be reduced to the standard of plain English and common sense, so long as writing is readily paid by the folio and fees can be graduated by the length and imposing appearance of the "documents" requisite in a suit at law.

I am aware, sir, that the cry of "legal reform" is regarded by many as raised by ignorant prejudice or mischievous demagogism. I do not doubt but a large proportion of the profession regard as exceedingly dangerous any innovations upon the ancient and venerable usages of our courts. The weight of even this authority should not make us doubt the reasonableness or practicability of a reform that commends itself to our common sense. It is the too common error of cultivated minds to prefer long-familiar channels of thought; to fear innovation, to cling to accustomed abuses in blind dread of untried reforms. I have often heard quoted as the favorite maxim of a somewhat eminent judge in a sister state: "Better that ninety-nine guilty persons should go unpunished, than that one guilty person should be punished contrary to the forms of law." This judicial maxim at once illustrates the attachment of the profession to the forms in which they have become versed and presents

the crying evil under which we suffer. The sacred "forms of law" are of more importance than justice.

But we are told that to release our courts from the restriction of these strict and stringent forms will result in untold abuses, make our judges arbitrary tyrants, and in the end prove subversive of all the aims of litigation. The warning might intimidate, did not our present system so completely fail to subserve the attainment of justice. The practice of cutting up and subdividing all suits at law—giving each a particular name, forbidding a man to prosecute except in the precise form to which his action belongs, and punishing him if he makes a mistake, when the line between them is so difficult to discover that the most learned judges differ—renders the attainment of anything like justice through our courts a proverbial "uncertainty." Mr. O'Connor, a distinguished member of the bar of New York City and a strenuous advocate of legal reform in the convention of 1846, cites an instance where an action of debt was brought to recover about \$1,000. The defendant insisted that the form of action should have been covenant. A learned judge at circuit decided that the action was in right form. The supreme court, three years afterwards, in a learned opinion citing almost all the books of the common law, held the same opinion. Yet that judgment two or three years afterward was reversed by the unanimous opinion of the court of errors, and the plaintiff compelled to pay costs far greater in amount than the original claim. Mr. O'Connor further remarks that chancery courts have extended their originally limited jurisdiction, and the courts of law liberalized their remedies and encroached upon the peculiar province of chancery, so that these jurisdictions are absolutely interlocked so as to puzzle the most learned to distinguish where law practice ends and chancery begins. Yet bringing a suit at law, when the remedy should have been in equity, subjects to a nonsuit; and the mere question to which court a suit belongs often costs years of litigation and the entire fortune of the applicant seeking justice. The plaintiff in the case of *Elmendorf v. Harris* (5th Wendell's Reports), as quoted by Mr. O'Connor, applied for remedy at law in the court of common pleas. The judge decided that relief could not be had at law. The supreme court some years after said the same. Seventeen volumes of Wendell's reports elapse, and we find the decision of the court of errors that his remedy was at law. After this delay and ruinous cost, he could have a trial of the merits of

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the case. Our books are full of nonsuits, after long and expensive litigation, merely because parties, lawyers, and judges do not know the true form of action, or within which jurisdiction the action appropriately belongs.

I will not delay this convention with a lengthy comment upon these facts, merely remarking that there must be something radically defective in our administration of justice when a man may be compelled to push his claim for the enforcement of his rights or redress of his wrongs through every grade of our courts and never have the intrinsic merits of his case taken the least notice of—courts, counsel, parties, and jurors all bending to the consideration of some technical point which is made vital to the suit but which has no sort of relation to justice in the premises. I must confess, Mr. President, that while I discuss this matter with unfeigned diffidence of my own information on the subject, I am skeptical as respects the existence of any magic that peculiarly propitiates justice in the declarations, pleas, replications, rejoinders, etc., etc., etc. of proceedings in equity or the multiplied fictions of the pleadings at law. It seems to my humble comprehension that the two systems (law and equity) can be blended, the present arbitrary distinctions in actions at law abolished, our antiquated forms substituted by plain declarations of fact, and thus our courts become Americanized—all their proceedings marked with that simplicity, energy, and straightforwardness which we proudly claim as national characteristics. Let the suitor be able to enter our courts, state his case in a direct manner; the defendant answer as explicitly; and the court and jury give judgment as to right and wrong in the case in view of the facts set forth. I do not pretend that the section reported by the committee, or even the substitute under discussion, explicitly enjoins the complete and radical reform just hinted at. But let three commissioners—"men learned in the law," if you please—as I understand the gentleman from Lafayette wishes so to restrict the selection—for we want the pruning work of intelligent reformers, not the blind cutting and slashing of ignorant and prejudiced innovators—let them be men of eminent learning and ability, but imbued with the warm impulse of real improvement, and I believe that the whole reform will be produced in or result from their labors.

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beg leave to read in contrast two forms of declaration in an action for slander, cited by Mr. Chatfield, an eminent lawyer in the New York convention, in argument on a similar proposition before that body.

[SUPREME COURT]

A. B. complains that C. D. on the tenth day of August, 1846, at Albany, spoke concerning the said A. B. the following false and slanderous words, to wit:—You are a thief. He is a thief. He stole a sheep. He stole, and ought to go to state prison. To the damage of the said A. B. C. F., Att'y.

This is simple, plain, practical—it is common sense! Can as much be said for the following, which Mr. Chatfield says would be the form under the present system in the courts of that state?

SUPREME COURT

Of the term of January; in the year one thousand eight hundred and forty-five.

Otsego County, ss.—John Doe, plaintiff in the suit, by Richard Roe, his attorney, complains of James Stiles, defendant in this suit, by the filing and service of a declaration and not by a writ of a plea of trespass on the case. For that, WHEREAS, The said plaintiff now is a good, true, and honest and faithful citizen of this state and as such hath always behaved and conducted himself and had deservedly obtained the good opinion and esteem of all his neighbors and other good and worthy citizens of this state to whom he was in any wise known, to wit, at the city of Albany and until the committing of the several grievances by the said defendant as hereinafter mentioned the said plaintiff had not been guilty or been suspected to be guilty of the crime of larceny or any such crime; yet the said defendant, well knowing the premises, but greatly envying the happy state and condition of the said plaintiff, and contriving and falsely intending to injure the said plaintiff in his said good name, fame, and credit, and to bring him into public scandal, infamy, and disgrace, with and amongst all his neighbors and other good and worthy citizens of this state, and to vex, harass, impoverish, and annoy him, the said plaintiff—heretofore, to wit, on the twenty-second day of August, 1846, in a certain discourse which the said defendant then and there had in the presence and hearing of divers good and worthy citizens at Albany in the county of Albany, falsely and maliciously spoke and published to, of, and concerning the said plaintiff, these false, malicious, and defamatory words, following, that is to say:—You, the said plaintiff, are a thief; you (the said plaintiff again meaning) stole; you (the said plaintiff again meaning) stole a sheep; you (the said plaintiff again meaning) robbed a henroost; you (the said plaintiff again meaning) stole; and you (the said plaintiff again meaning) ought to go to state's prison; he (the said plaintiff again meaning) is a thief; he (the said plaintiff again meaning) stole; he (the said plaintiff again meaning) stole a sheep; he (the said plaintiff again meaning) robbed a henroost; he (the said plaintiff again meaning) stole; and he (the said plaintiff again meaning) ought to go to the state's prison, and thereby then and there meaning that the said plaintiff had been and was guilty of larceny.

By reason whereof, the said plaintiff hath been greatly injured in his said good name, fame, and credit and hath been brought into public scandal, infamy, and disgrace with and amongst all his neighbors and other good and worthy citizens of this state, insomuch that divers of those neighbors and

citizens have wholly refused to have any intercourse, transaction, or acquaintance with the said plaintiff, as they were before the committing of the said several grievances by the said defendant, hereinbefore mentioned, used and accustomed to have, and otherwise would have had, sustained great damage, to wit, ten thousand dollars, and therefore he brings suit.

E. F., Attorney

Contrast, too, the following declaration in an action for assault and battery, with any form now in common use:

[SUPREME COURT]

A. B. claims that C. D. on the first day of August, 1846, struck him, the said A. B., to his damage.

C. F., Attorney

Are not such reforms as these practicable? Are they not demanded by the spirit of the age, by every consideration of public interest and public safety?

I do not pretend that every practicable measure of legal reform will enable us to dispense with that useful and honorable profession, the profession of the law; neither do I join in any sweeping tirade of denunciation against a calling which has been the school of many of the brightest intellects and most pure and brilliant statesmen the world has ever known. I will even admit that much of the keenness and readiness of intellect which peculiarly distinguishes that profession is acquired by fencing with the rigid and technical forms I would see reformed in their practice in courts. I honor that industry which qualifies its possessor by patient study of these forms for defending his client from injury through their misapplication. At the same time, while I regard the public good which demands the changes I have hinted at as paramount to every interest of the few, I most implicitly believe that the profession would be elevated in usefulness, dignity, and popular estimation by a thorough judicial reform. This would winnow the profession, driving off to more appropriate and for such more useful pursuits that pettifogging class of lawyers, the disgrace of the fraternity, who make their advantage in deepening the mystery which surrounds the system and live solely by playing the tricks and fitness of the trade; while it would retain and secure in public confidence those whose minds are imbued with principles of justice and whose talents peculiarly fit them for righting the wronged, however subtle the web in which injustice may have enveloped itself.

Mr. President, the spirit of innovation and renovation which is constantly remodeling every other department of government has

until recently left the judiciary almost intact, a venerable relic of the past. Its changes have commenced. Our judicial functionaries can no longer be left to hold their offices by any other tenure than the free suffrages of the people. Other and more important changes are projected. The people will determine that the system which governs all their relations and transactions shall no longer remain a mystery. New York has taken decisive preparatory steps toward radical reform, the initiative which was the work of the enlightened convention which recently revised her constitution. The friends of legal reform are now anxiously watching how far she will venture and what will prove the result of her efforts. But nothing save the actual experience that the seeds of hope which have been engendered in their minds will produce nothing but fruitful mischiefs will eradicate the belief that it is practicable to open a short, plain, and direct road to tribunals of public justice—that the difficulties of obtaining justice should be confined to the nature of the wrong itself and not be found, chiefly, in obtaining access to the power that can afford the redress.

Mr. Vanderpoel said that when he first saw the gentleman last up offering his lengthy substitute and rising into such lofty and solemn strains of eloquence in support of it, he had supposed that his poor proposition was to be totally annihilated for some gross fault which his humble intellect had not discovered. But as the gentleman progressed in his speech he had discovered that the propositions were nearly identical, and he now saw that he had offered it merely as a means of delivering himself of a fine speech with which he had been pregnant. This was all well enough for this purpose, and the speech was a very good one; but as to the intrinsic merits of the two propositions, he did not think that that offered by the gentleman was any improvement upon his own. He had seen in his experience the evils of the present system of legal forms and practice; and as neither the judiciary committee nor anyone else had proposed any way to remedy it, he had framed the amendment he had offered, and being no lawyer he had taken the precaution to submit it to the scrutiny of the honorable Chief Justice (Mr. Dunn) who, with some slight alteration, had approved it. Thus he had the advantage of the gentleman in the concurrence and approbation of those who understood the subject best. He thought, therefore, that his amendment would answer every purpose as well, if not better, than the substitute proposed.

Mr. Chase said he liked the substitute well, the original better, but the speech best of all. But as he supposed that all the members were familiar with the grievances so fervently dwelt upon by the gentleman from Rock and encomiums upon the necessity of providing a remedy—in fact, just about to adopt the proposition without dissent when he arose—he was not sure that the gentleman's eloquence had been put to good use. He hoped, however, he would write out his speech and have it printed for general circulation.

Mr. Kilbourn said he perceived the substitute contained one provision which the original did not. It proposed to insert a requirement in the constitution, not only that the legislature should provide for a revision of the laws as well as the practice, but that they should be revised in a certain manner. The other provided only for a revision and reform of the practice, pleadings, forms, etc. of the courts. He thought the latter provision was a good and proper one, the former not. The gentleman from Rock (Mr. Harvey) it was to be noticed had said nothing in support of the peculiarity of his provision. He had spoken only of the evils in the forms and practice now in use. He had omitted to assign any reason why the legislature should be required to provide for revising the statute laws in a certain manner. Mr. Kilbourn thought that the original amendment provided for all that was necessary—all that the gentleman himself had undertaken to show was necessary—and that the substitute provided for what was unnecessary and improper.

Mr. Gale preferred the substitute, and one good reason for it was that it provided for a revision of the statutes, which the other did not. This was very much needed. The statutes were now scattered through a number of pamphlets which were very difficult to be obtained; and many late ones had abolished those preceding, so that it was difficult to ascertain the actual existing law. He thought the revision of the statutes and of the practice and pleadings should be done together, so that a harmonious system might be established; and he thought, moreover, that this could be done in no other way. There could be no question but that a radical revision of the practice and pleadings, as well as of the statutes, was necessary.

Mr. Harvey had underestimated the paternal anxiety of the gentleman from Jefferson. That gentleman's investigations in the mystic pages of—the old constitution—had disclosed a section which he thought should be in the one they were then framing. He had improved the chance for reputed authorship by copying and propos-

ing a part of the section in the old constitution. This he withdrew at the time at the solicitation of the chairman of the judiciary committee, in order that a well-matured and suitable section on the subject might be drafted and reported by that committee. The gentleman's time while awaiting the action of the judiciary committee had, it seems, been occupied in watching the gap thus left open; and this morning we saw the anxious, would-be father choking off the gentleman from Fond du Lac (Mr. Beall) who, from inadvertency or indifference to the aspirations of the gentleman, had proposed a section on this important subject. The gentleman had finally been gratified by the committee of the whole in having his proposition received and reported to the convention. Mr. Harvey did not wish to be guilty of any discourtesy to the honorable gentleman from Jefferson. He had gone so far as to offer to that gentleman the substitute he now proposed to the convention, which had been carefully drawn and designed to cover the whole subject, and asked that gentleman to propose it in lieu of his own copy; this would have obviated any further interference or remark from him, and the gentleman might have had all the thunder. But the gentleman preferred his own bantling. Mr. Harvey thought he had shown points of difference between the substitute and the section reported from the committee of sufficient importance to afford ample apology for the trouble he had given to the convention, without laying to his charge the motives which the delegate from Jefferson had with so much unfairness, discourtesy, and lack of gentlemanly propriety attributed to him. The substitute gave a margin of one year within which the commissioners might be appointed; and Mr. Harvey thought he had submitted important reasons for this difference. It included provision for a revival of our statute laws, now scattered through so many pamphlets, and which were incongruous and contradictory in their provisions, and it recognized the power in and enjoined the duty upon the legislature to perfect the work of judicial reform if one set of commissioners failed to do it. In these points the substitute differed from the original section, and he hoped if the convention deemed these of sufficient importance to merit the preference of the substitute to the amendment of the committee, they would adopt it, disregarding the cries of an ambitious parent over the wounds which he might conceive such action to inflict upon his precious child.

As for the insinuations of the gentleman from Fond du Lac (Mr. Chase) that he had consumed the time of the convention in making a speech for popular effect in favor of a proposition upon which the convention were already unanimous in opinion, Mr. Harvey would remark that the gentleman would find no little measure of hostility to judicial reform, even in this body, and that the charge of uselessly consuming the time of the convention came with a very bad grace from a gentleman from whose lips a wag in the corner behind him had tallied twenty-three speeches on the same day during the present week.

Mr. Vanderpoel remarked that as the gentleman from Rock (Mr. Harvey) and himself were alike ignorant of the law, he thought perhaps it would have been proper that neither of them should have put himself so far forward in proposing reforms in it.

The question was then taken on the adoption of the substitute, and it was decided in the negative. The amendment of the committee was then concurred in.

Mr. Doran moved to amend the article by striking out all after the first section and inserting:

"Section 2. The judicial power of the state (except as before provided for impeachments) shall be vested in a supreme court, circuit courts, county courts, justices of the peace, and in such municipal and other courts as the legislature may from time to time establish.

"Section 3. The supreme court shall consist of three judges who shall hold their offices for the term of nine years, except two of the first elected judges, the term of one of whom shall be three years, and of the other, six years, so that one judge of said court shall be elected every three years. The term of service of the said judges first elected shall be determined by themselves by a lot or in such manner as they may agree upon, which shall be certified to the governor, and his commissions shall be issued to them for the terms respectively so determined.

"Section 4. The jurisdiction of the supreme court shall extend over the state. It shall be a court of appeals and for the correction of errors together with such other powers and duties as may be prescribed by law; but in no case shall a trial by jury be allowed in said court.

"Section 5. Provisions shall be made by law for holding at least two terms of said court in each year.

"Section 7. The several circuit courts shall consist of one judge, whose term of office shall be five years; they shall be courts of general jurisdiction, except in such matters as may be vested in other courts to their express exclusion; and they shall possess chancery as well as common law jurisdiction.

"Section 9. The judges of the supreme court shall be elected by the electors of the state qualified to vote for members of the legislature; and the judges of the circuit courts shall be elected by the electors of the several

As for the insinuations of the gentleman from Fond du Lac (Mr. Chase) that he had consumed the time of the convention in making a speech for popular effect in favor of a proposition upon which the convention were already unanimous in opinion, Mr. Harvey would remark that the gentleman would find no little measure of hostility to judicial reform, even in this body, and that the charge of idleness consuming the time of the convention came with a very bad grace from a gentleman from whose lips a wag in the corner behind him had tallied twenty-three speeches on the same day during the present week.

Mr. Vanderpoel remarked that as the gentleman from Rock (Mr. Harvey) and himself were alike ignorant of the law, he thought perhaps it would have been proper that neither of them should have put himself so far forward in proposing reforms in it.

The question was then taken on the adoption of the substitute, and it was decided in the negative. The amendment of the committee was then concurred in.

Mr. Dorn moved to amend the article by striking out all after the first section and inserting:

"Section 2. The judicial power of the state (except as before provided for impeachment) shall be vested in a supreme court, circuit courts, county courts, justices of the peace, and in such subordinate officers as the legislature may from time to time establish.

"Section 3. The supreme court shall consist of three judges, who shall hold their offices for the term of nine years, except two of the first elected judges, the term of one of whom shall be three years, and of the other, six years, so that one judge of said court shall be elected every three years. The terms of service of the said judges first elected shall be determined by themselves by a lot or in such manner as they may agree upon, which shall be certified to the governor, and his commissions shall be issued to them for the terms respectively so determined.

"Section 4. The jurisdiction of the supreme court shall extend over the state. It shall be a court of appeals and for the correction of errors together with such other powers and duties as may be prescribed by law; but in no case shall a trial by jury be allowed in said court.

"Section 5. Provisions shall be made by law for holding at least two terms of said court in each year.

"Section 6. The several circuit courts shall consist of one judge, whose term of office shall be five years; they shall be courts of general jurisdiction, except in such matters as may be vested in other courts by their express creation; and they shall possess chancery as well as common law jurisdiction.

"Section 7. The judges of the supreme court shall be elected by the electors of the state qualified to vote for members of the legislature; and the judges of the circuit courts shall be elected by the electors of the several

districts; and no election for judges shall be held within thirty days of the time of holding any general election.

"Section 10. The several judges of the supreme court shall receive an annual salary of not less than \$1,500; and the several judges of the circuit courts shall receive a salary of not less than \$1,200 dollars, to be paid quarterly out of the state treasury.

"Section 11. The county courts shall consist of one judge, and their jurisdiction shall extend over the county in all cases or suits removed from justices of the peace by appeal, certiorari, or in any other manner; in all cases or suits where the debt, demand, or sum claimed shall not exceed five hundred dollars; in such prosecution for crimes or misdemeanors upon complaint, as may be prescribed by law. [They shall also be probate courts for the county, and the judges thereof shall have such other powers and shall perform such other duties as may be prescribed by law.]

"Section 12. The judges of the county courts shall be elected by the qualified voters of their respective counties, and shall hold their offices for the term of four years, and shall receive a salary of not less than — hundred dollars, to be paid quarterly out of the county treasury. The salary of the said judge in each county shall be fixed by the county board previous to his election and shall not be reduced during the term for which he may be elected; and the legislature shall provide such tax on suitors in the several county courts from time to time as will together with the probate fees pay the salary of each judge.

"Section 13. There shall be a competent number of justices of the peace elected by the qualified voters of each city and two in each town of a county. They shall have such criminal and civil jurisdiction as may be provided by law; but they shall not have jurisdiction of any matter of controversy where the title or boundaries of land may be in dispute.

"Section 14. The justices of the peace in office at the adoption of this constitution may continue in office during the term for which they were elected; and no justices shall be elected under this constitution, unless to fill vacancies, or in newly created wards or towns, until the expiration of the terms of the several justices as aforesaid.

"Section 15. The election of the judges of the several courts and of the justices of the peace shall be held, conducted, and certified in manner prescribed by law. The returns of all elections of judges and justices of the peace shall be made and certified to the governor, who shall thereupon (after the classification and allotment as in this article provided) issue a commission under his hand and the great seal of the state, to the person [so] elected, for the term for which he may be so elected; and the said returns shall be filed and preserved in the office of the secretary of state.

"Section 16. Whenever any vacancy shall occur in any of the supreme or circuit courts, the governor shall fill the same by appointment and commission under the great seal of the state, and the person so commissioned shall hold the office until the first day of January next after an election of some person [who] shall have been duly elected and qualified to fill such vacancy; and the governor shall also issue his proclamation requiring the people to elect at the next annual election after such vacancy may happen a person to

fill such vacancy, who, when elected, shall be commissioned for the remainder of the term of the person whose place he was so elected to fill.

"Section 17. Vacancies in the office of county judge shall be filled by the county board and commissioned by the governor until the first day of January after the next annual election, at which time a person shall be elected and commissioned to fill such vacancy for the remainder of the regular term and no longer. And vacancies in the office of justice of the peace shall be filled by an election in the town or ward for the remainder of the regular term and no longer.

"Section 18. The judges of the several courts and justices of the peace, before they proceed to execute the duties of their offices, shall take and subscribe before some officer qualified to administer the same the following oath or affirmation, viz.: 'I, —, do solemnly swear (or affirm) that I will support the Constitution of the United States and of the state of Wisconsin, and that I will administer justice without respect to persons, and do equal right to the poor and the rich, and that I will faithfully and impartially discharge all the duties incumbent on me as (judge or justice, as the case may be) according to the best of my abilities and understanding, so help me God.' The said oath or affirmation [of a judge] shall be filed and recorded in the office of the secretary of state, and of a justice of the peace in the office of the clerk of the county court.

"Section 19. No judge shall receive any fees or perquisites of office, or other compensation, except his annual salary. The annual salary of any judge may be increased but shall not thereafter be reduced during the term for which he shall be elected; any person appointed or elected to fill a vacancy shall have the same rights in this respect as the person in whose place he shall be so elected or appointed.

"Section 20. The judges of the several courts may be removed from office by impeachment or by a vote of two-thirds of each branch of the legislature, upon a fair trial before a joint committee of each house, after due notice to the accused, or on conviction upon indictment for any criminal offense; and the said vote of the legislature or the record of conviction and sentence shall be certified to the governor, who shall thereupon by proclamation declare the office vacant.

"Section 21. Justices of the peace may be removed from office upon conviction upon indictment of any criminal offense or of any malfeasance in office; and such removal shall compose part of the sentence that may be entered up against the person so convicted.

"Section 22. There shall be three circuit court judges elected at the first election of judges, and the legislature shall divide the state into three circuits; the legislature may, however, from time to time change, increase, or alter the circuits, but no judge shall be removed from office by reason of such change, increase, or alteration.

"Section 24. The first judges elected under this constitution shall enter upon the discharge of the duties of their respective offices on the first day of — next, and their constitutional term shall commence on the first day of January in the year 1849.

"Section 26. Judges of the supreme or circuit courts shall not be permitted to practice as attorneys or counsellors at law or solicitors in chancery in any of the courts in this state or the United States within this state. Judges of the county courts may practice as attorneys or counsellors at law or solicitors in chancery in the supreme or circuit courts of the state or in the court of the United States within the state, but in no suit or action within the jurisdiction of the county courts.

"Section 27. One district attorney shall be elected in each county by the qualified electors thereof at the time of general election for state officers, whose term of office shall be two years and until his successor shall be duly elected and qualified. The first elected officers under this provision shall enter upon the discharge of their duties on the fourth day of — next, and their constitutional term shall commence on the first of January in the year 1849."

Mr. Lovell moved to amend the original article as follows, to wit: "Strike out the fourth, fifth, sixth, seventh, and eleventh sections and insert five sections, to stand as follows:

"Section 4. The supreme court shall consist of a chief justice and two associate justices, to be elected by the judicial electors of the state, and two of whom may hold the court. The legislature shall at its first session after the adoption of this constitution provide by law for classifying the justices of the supreme court, in such manner that one of such justices shall go out of office every — years, and thereafter the justice elected to fill the office shall hold the same for — years.

"Section 5. The state shall be divided into three judicial circuits, to be composed as follows: The first circuit shall comprise the counties of Milwaukee, Racine, Waukesha, Walworth, Jefferson, and Rock. The second circuit shall comprise the counties of Brown, Manitowoc, Sheboygan, Washington, Dodge, Fond du Lac, Calumet, Winnebago, Marquette, and Portage. The third circuit shall comprise the counties of Columbia, Dane, Sauk, Green, Lafayette, Iowa, Grant, Crawford (including Chippewa for judicial purposes), and St. Croix (including La Pointe for judicial purposes).

"Section 6. There shall be a circuit judge elected for each circuit by the qualified electors of such circuit, who shall reside therein and hold his office for the term of five years.

"Section 7. The supreme court shall be held once in each year, in each of the circuits, at such time and place as may be prescribed by law. A circuit court shall be held in each of the counties organized for judicial purposes at least twice in each year. The legislature shall also provide for holding one of said terms of the circuit court by one of the justices of the supreme court, but such justice shall exercise a common law jurisdiction only.

"Section 8. The legislature may alter the limits or increase the number of circuits, making them as compact as may be and bounding them by county lines; but such increase shall not exceed two, nor shall such alteration or increase have the effect to remove a judge from office. In case of an increase of circuits the judge or judges shall be elected as provided in this constitution."

Mr. Whiton moved to amend by striking out in section 4 the last paragraph and inserting the following words, to wit: "The said separate supreme court when so organized shall not be changed or discontinued by the legisla-

ture, and the term of office of said judges shall be the same as is herein provided for the circuit judges. The said judges shall be so classified that but one of them shall go out of office at the same time."

Mr. Sanders gave notice that he would move to amend the article by adding as section —: "The legislature may provide for the apportionment of one or more persons in each organized county and may vest in such persons judicial power as shall be prescribed by law: *Provided*, That said power shall not exceed that of a circuit judge at chambers."

Mr. Sanders moved to reconsider the vote on concurring in the eighth amendment of the committee of the whole, which was agreed to. Mr. Sanders moved to reconsider the vote amending said amendment by striking out "shall" and inserting "may," which was agreed to. The said amendment to the amendment of the committee was then nonconcurring in. The amendment of the committee was then concurring in.

On motion of Mr. Beall the convention adjourned.

Mr. Carter, from the majority of the select committee on that subject, made the following report, to wit:

The select committee, to whom was referred a resolution to pay the account of H. Tuttle, report that they have examined the subject and find that Mr. Tuttle was employed by the doorkeeper and messenger on the twenty-second day of last month to perform a certain part of their duties as directed and divided by the committee on that subject. He not having been employed by the convention or any of its officers authorized to do so, the committee are therefore opposed to the precedent it would establish to recognize the practice, and recommend the adoption of the following resolution: *Resolved*, That H. Tuttle be allowed \$12 for thirty-two days' service, and that the convention dispense with his services in future unless employed or made an officer of the convention."

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the preamble and declaration of rights, legislative, executive, and administrative articles, with several corrections to each, in the order here presented, in which they ask the concurrence of the convention."

DECLARATION OF RIGHTS

"First line, second section, 'nor' instead of 'or.'"

"Section 4. 'Excessive bail shall not be required, nor shall excessive fines be imposed, nor cruel and unusual punishment inflicted.'"

SATURDAY, JANUARY 22, 1848

Prayer by the Rev. Mr. Lord.

The journal of yesterday was read and corrected.

Mr. Estabrook, from the committee on education and school funds, made the following report, to wit:

"Your committee, to whom was referred the petition of Updike Rathbone, Gilbert Rathbone, and others of the county of Racine, praying this convention to provide in the constitution that preference should be given to actual settlers on the school lands, when such lands should be brought into market, respectfully report that in the opinion of your committee such settlers as at the time of the admission of this state into the Union may be in possession of the school lands of the state, by virtue of any lease or permit granted under any law of the territory, ought to have preference in the purchase of such lands whenever they may come in market. But your committee are also of opinion that this is a proper subject for legislation, and as such it is deemed inexpedient to make it a matter of constitutional law. All of which is respectfully submitted.

E. ESTABROOK, Chairman"

Mr. Carter, from the majority of the select committee on that subject, made the following report, to wit:

"The select committee, to whom was referred a resolution to pay the account of H. Tuttle, report that they have examined the subject and find that Mr. Tuttle was employed by the doorkeeper and messenger on the twenty-second day of last month to perform a certain part of their duties as defined and divided by the committee on that subject. He not having been employed by the convention or any of its officers authorized to do so, the committee are therefore opposed to the precedent it would establish to recognize the practice, and recommend the adoption of the following resolution: *'Resolved, That H. Tuttle be allowed \$32 for thirty-two days' service, and that the convention dispense with his services in future unless employed or made an officer of the convention.'*"

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the preamble and declaration of rights, legislative, executive, and administrative articles, with several corrections to each, in the order here presented, in which they ask the concurrence of the convention.

DECLARATION OF RIGHTS

"First line, second section, 'nor' instead of 'or.'

"Section 6. 'Excessive bail shall not be required, nor shall excessive fines be imposed, nor cruel and unusual punishment inflicted.'

"Section 7. First line, after 'accused' strike out 'hath a' and insert 'shall enjoy the.'

"*Quaere.* 'Behalf' for 'favor' in the same section.

"Section 8. Transpose 'twice' so as to read, 'shall be put twice in jeopardy.'

"Section 9. Strike out in the first line 'within this state' and also 'ought to find' and insert 'is entitled to.'

"Section 11. Strike out all after 'warrants' in the third line and insert 'Shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.'

"Section 16. In the first line strike out 'in this state.'

"Section 18. 'The rights of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any ministers against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies or theological or religious seminaries.'

"Section 20. In the first line strike out 'kept' and insert 'in.'

"Section 22. So alter as to read: 'The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.'"

LEGISLATIVE ARTICLE

"Section 4. In the first line place 'annually' immediately after 'choice.' Strike out the last line and insert the words 'as practicable.'

"Section 6. Alter so as to read: 'No person shall be eligible to the legislature who shall not have resided one year within the state and be a qualified elector in the district which he may be chosen to represent.'

"Section 16. Alter so as to read: 'No member of the legislature shall be liable in any civil action or criminal prosecution whatsoever for words spoken in debate.'

"Section 20. Alter so as to read: 'The yeas and nays of the members of either house on any question shall at the request of one-sixth of those present be entered on the journal.'

"Section 23. Alter so as to read: 'which shall be as nearly equal as practicable' and strike out 'throughout the state.'"

EXECUTIVE ARTICLE

"Section 3. Insert after the word 'elected' the words 'by the qualified electors of the state.'

"Section 4. Suggest striking out the words 'by message' and substituting 'may deem' for 'shall judge.'"

ADMINISTRATIVE ARTICLE

"Section 1. Alter so as to read: 'There shall be chosen by the qualified electors of the state, at the times of choosing the members of the legislature, a secretary of state, treasurer, and attorney general, who shall severally hold their offices for the term of two years.'

"Section 2. In the fifth line put a period after 'legislature' and then read 'He shall be ex officio auditor and shall perform.'

"Section 4. Suggest insertion of 'register of deeds' after 'coroners' and alter in fourth line so as to read, 'and be ineligible for two years next succeeding the termination of their offices.' And strike out in the eleventh line 'within the term for which he shall have been elected.'"

Mr. Dunn stated that the committee in discharging their duty had examined the several articles with scrupulous care and had suggested several verbal amendments, in which they had varied the phraseology by selecting such words as conveyed the meaning most fully and as were most generally used in constitutional law. They had also made some grammatical and orthographical corrections, but in no case changed the meaning or sense.

Mr. Prentiss, from the committee on schedule and miscellaneous provisions, made the following report, to wit:

"The committee on schedule and miscellaneous provisions, to whom were referred the petitions of sundry inhabitants of the counties of Fond du Lac and Walworth, praying the convention to change the name of Wisconsin to that of Columbus, having considered the same, respectfully report that in their opinion it is inexpedient to grant the prayer of the petitioners, and they would therefore ask leave to be discharged from the further consideration of said petitions.

THEODORE PRENTISS

G. W. FEATHERSTONHAUGH

J. L. DORAN

E. P. COTTON"

The President announced the appointment of the following select committees, to wit: under the resolution introduced by Mr. Lewis and adopted on the twentieth instant: Messrs. Lewis, Doran, O. Cole, Judd, and Whiton; under the resolution introduced by Mr. Dunn and adopted yesterday: Messrs. Dunn, Lyman, and Crandall.

Resolution No. 2, introduced by Mr. Case yesterday, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 3, introduced by Mr. Biggs yesterday, was then taken up, when Mr. Chase moved to lay the same upon the table, which was disagreed to. Mr. Dunn moved that the resolution be postponed until Monday morning, which was agreed to.

Resolution No. 4, introduced by Mr. Fenton yesterday, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. Reymert introduced the following resolution, which was read, to wit: "Resolved, That the secretary of this convention be hereby directed to deposit in the office of the secretary of Wisconsin Territory at Madison the constitution of the state of Wisconsin and all petitions, memorials, reports of committees, manuscript journals, and manuscript minutes of the committee of the whole, and all other records of this convention.

"Resolved, That the engrossed constitution shall be signed by the members of the convention and by the president and secretary thereof, on the— day of January instant, at — o'clock A.M., in convention, and the following certificate precede the signatures:

"We, the undersigned members of this convention to form a constitution for the future state of Wisconsin, to be submitted to the people thereof for their adoption or rejection, do hereby certify that the foregoing is the constitution as agreed to by the convention.

"In testimony whereof, we have hereunto set our hands, at Madison, this — day of January, A.D. 1848."

"Resolved, That the secretary distribute the journal of this convention as follows: to each of the delegates, one copy; to the President of the United States, the heads of departments of government, including the commissioners of Indian affairs and the commissioners of the General Land Office, each one copy; to the executive of each of the United States, each one copy; to the secretary of the Senate and clerk of the House of Representatives of the Congress of the United States, for the use of the houses of Congress, each one copy; to the Congressional Library, five copies; to the governor, secretary, and judges of the supreme court of the territory of Wisconsin, each one copy; to the clerks of the courts of the organized counties in this territory, for the use of the respective counties, each one copy; to the territorial library, twenty-five copies. The remainder of the copies shall be deposited in the territorial library, subject to such distribution as may hereafter be directed by law."

The minority of the committee under the resolution of Mr. Carter, of the eighteenth instant, made the following report:

"The minority of the committee, of which Mr. Carter is chairman, report that they consider H. Tuttle entitled to the same pay as the other messengers.

G. W. FEATHERSTONHAUGH
C. M. NICHOLS"

The report of the committee on revision and arrangement was then taken up. And the amendments [of the committees on] the declaration of rights, executive, and administrative articles were then severally concurred in.

Mr. Dunn moved that the consideration of the report relative to the legislative article be postponed until Monday morning, which was agreed to. Mr. Dunn moved that the articles declaration of rights, executive, and administrative be recommitted to the committee, which was agreed to.

No. 7, article on the judiciary, was then taken up. And the pending ques-

tion being on the amendment of Mr. Whiton to amend said article, and having been put, it was decided in the affirmative.

Mr. Lakin moved to amend section 7 by striking out all after the word "direct" in the seventh line and inserting the following: "shall go out of office at the end of three years, one at the end of four, one at the end of five, one at the end of six, and one at the end of seven years, and thereafter, as a vacancy shall happen, a judge shall be elected to fill the same for the term of seven years."

Mr. Lakin said he was in favor of electing the judges by the qualified electors of each district and wished, therefore, to see that system put on such a basis as to be permanent. In trying experiments it was right to try them fairly and not to leave them in so odious a form that any observer could see that they were nuisances. The plan proposed would be found not to work well, and the friends of the elective system would say that it was a failure, when in fact it had not received a fair trial. He did not think members had looked at this matter in a right light. There was something else to be done besides offering men office. Some fascination must be thrown about an office in order to induce competent men to accept it. If gentlemen would but reflect they would see that by the present provisions the system was rendered odious. Members of the bar, to whom the streams of business were flowing, were asked to direct those streams in a different course when they were asked to become candidates for the bench; for no one would put business in their hands when about to take an office which would preclude them from conducting it. What was their recompense for sacrificing their business? In the first place there was a prospect of defeat, which of itself brought some little odium. In the second, if they got the office they got nothing at last. The one term was staring them in the face. He took it for granted the candidates for the judiciary would be chosen from among the members of the bar; but no lawyer would abandon a certainty for an uncertainty. Those who had an itching for office had other fields of contest beside the bench, around which more fascinations were thrown. Now with all these hazards and uncertainties would any man ask the office? None but office-seeking beggars—men who would submit to being beaten and kicked—would be found among the candidates. There was some little fascination and attraction about the bar. The man who threw himself upon his own resources and came and went when he pleased enjoyed some privileges which were not enjoyed by public servants.

If gentlemen who advocated the proposed system would examine who were to be the sufferers by its operation, they might hold different opinions. There was no fear that the bar would be the sufferer. Lawyers were rarely litigants and would take good care of themselves. He would say to gentlemen who were about to adopt a miserable system which would place third-rate demagogues on the bench, that they themselves would be the sufferers. The bar would if anything be the gainer by it. Nevertheless, as a citizen of Wisconsin he wished to see a good constitution adopted, not merely for the advantage of any particular class. Those gentlemen who were in favor of this system were acting for the benefit of a single class and not the class whom they were desirous of benefiting.

No one need suppose that the honor of the office under this proposed system would give it sufficient attraction. It was too empty. No one would wish to be termed a yearling judge or to be liable to removal at the caprice of any legislature.

Mr. Doran said that if he had supposed for a moment that the remedy proposed by the gentleman from Grant was adequate to cure the evils he complained of, he would gladly support it. It was a good principle to choose the lesser of two evils. Under any system we ran a chance of having bad judges. The gentleman from Grant proposed to obviate the evils arising from having judges for a term of five years, by increasing the term to seven. He admired the force of the gentleman's reasoning and the clearness with which he had pointed out the evils arising from short terms, but he could not perceive that these evils would be remedied by substituting a term of seven instead of five years. Hence he thought the gentleman's reasoning, powerful as it was, should be a warning not to place judicial power in the hands of such men as would aspire to it under the proposed system. Were these men who had been so forcibly described by the gentleman from Grant to be the ones to adjudicate in cases of last resort? He found in the gentleman's argument the strongest reasons in favor of a separate supreme court.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 33; for the vote see Appendix I, roll call 153].

Mr. Chase moved to amend section 2 by adding the following: "The term of office of the judges of the said municipal and inferior courts shall not be

longer than that of the circuit judges." And the question having been put, it was decided in the affirmative.

Mr. Sanders moved to amend the article by adding the following: "Section —. The legislature may provide for the appointment of one or more persons in each organized county and may vest in such persons such judicial power as shall be prescribed by law: *Provided*, That said power shall not exceed that of a circuit judge at chambers." And the question having been put, it was decided in the affirmative.

Mr. Lakin moved to amend the article by striking out section 13.

Mr. Lakin said that the provision as it stood in the article appeared to him to be a dangerous one. It seemed better on first sight than on close inspection. When anyone was convicted of crime, it must be of some crime recognized in the laws prior to the conviction. No *ex post facto* laws should be passed. But the section was in this respect altogether vague and uncertain. It did not point out any specific offense, but gave to the legislature an absolute power to remove the judge. It did not provide that they should remove him for any crime known by the law. It required, to be sure, that they should furnish him with a copy of the charges, but it did not specify the nature of the charges, nor did it require that they should be proved. It provided for a system of trial like that used of old in the case of witches. They were thrown into the water; if they swam, they were deemed guilty; if they sank, it was the same thing. If the legislature appointed the judges, there might be some propriety in giving to that body the power of removal. But the article provided that the judges should be elected by the people.

The judiciary were supposed to be governed by some known rules of action. They based their opinions on settled principles of law. The legislature were governed by mere opinion. If the system should be adopted, let it be reciprocal in its operation, so that the judiciary could address out the legislature, as well as the legislature address out the judiciary. If the judges were to be removed at all, let the removal be made for some known offense and by some tribunal established by law; but do not make a mockery of justice by telling the judge he has the opportunity of defending himself, and at the same time depriving him of the means of doing so by any known rules of action. He would ask the gentlemen who formed the committee on the judiciary what rules would govern the legislature in this matter. Were there any rules by which they were

bound to be governed? No. Their power was absolute and arbitrary. They could form fictitious charges and, without any regard to truth to sustain them, vacate the bench. The legislature instead of being governed by rules was governed by the force of circumstances—the rule which governs politicians generally. No man would be found so base and insignificant as to tie his hands behind him and look into a hungry lion's mouth. They could find no candidates for the judiciary under such a system.

Mr. Richardson was sorry that his colleague had thought proper to let loose such a tirade of abuse against the legislature. It seemed to him that if the legislature consisted of honorable and upright men, they would require some reasonable charges against the judges, and sitting as a jury, would do justice. The gentleman had assumed as an admitted fact that the legislature would act in an arbitrary and improper manner. He (Mr. Richardson) did not believe that we should ever have a legislature that would be guilty of such conduct. The gentleman had offered no argument—nothing but assertion.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 6, negative 52; for the vote see Appendix I, roll call 154].

Mr. Lakin moved to amend section 4 by striking out in the sixth line the words "by the qualified electors of the state" and inserting as follows: "in single districts by the qualified electors thereof." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 11, negative 47; for the vote see Appendix I, roll call 155].

Mr. Gale moved to amend section 19 by adding "And the legislature shall have power to provide by law common forms of procedure for remedies arising under both jurisdictions of law and equity."

Mr. Kilbourn thought that the section introduced by the member from Jefferson and adopted by the convention covered the whole ground sought to be covered by the present amendment.

Mr. Beall spoke.

Mr. Gale requested the chairman of the committee on the judiciary, Mr. Dunn, to state whether in his opinion the ground was covered. Mr. Dunn said the gentleman must exercise his own discretion. For his own part he was opposed to the amendment.

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The question was then put and was decided in the negative. And the eyes and noses having been called for and ordered, those who voted in the affirmative were (affirmative 8; negative 22; for the vote see Appendix I, roll call 152).

Mr. Lakin moved to amend section 4 by striking out in the sixth line the words "by the qualified electors of the state," and inserting as follows: "in single districts by the qualified electors thereof." And the question having been put, it was decided in the negative. And the eyes and noses having been called for and ordered, those who voted in the affirmative were (affirmative 11, negative 17; for the vote see Appendix I, roll call 153).

Mr. Gale moved to amend section 19 by adding "And the legislature shall have power to provide by law common forms of procedure for remedies arising under both jurisdictions of law and equity."

Mr. Kilbourn thought that the section introduced by the member from Jefferson and adopted by the convention covered the whole ground sought to be covered by the present amendment.

Mr. Beall spoke.

Mr. Gale requested the chairman of the committee on the judiciary, Mr. Dunn, to state whether in his opinion the ground was covered. Mr. Dunn said the gentleman must exercise his own discretion. For his own part he was opposed to the amendment.

Mr. Sanders thought the legislature had full power to adopt whatever code it should see fit. There was no absolute necessity for the proposition of the gentleman from Jefferson; it was intended only to draw the attention of the legislature to the subject. He was unwilling to encumber the constitution with unnecessary provisions.

Mr. Doran thought the ground was not covered by the section already adopted. He believed there were specific differences between law and equity, which must be provided for by a different and distinct practice; and was of opinion that without the amendment the legislature would not have the power to make the radical change which the gentleman from Walworth (Mr. Gale) required, in order to conform the practice of law with that of chancery. Under the old civil law the judge was required to act as a moderator—to find out and point out the matters of issue and difference. Under the common law practice the parties have to find these out for themselves, and hence the tedious process so objectionable to the people. Hence, in England and in the state of New York commission after commission had been constituted, and reports the most voluminous had been made, in order to simplify the practice. It was all to no purpose, and it was found necessary to let things take their own course. If this amendment were adopted, however, a system might be devised which would bring down the practice to the simple elements of complaint, petition, and answer. No effectual change could be made under the common law practice.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28; negative 29; for the vote see Appendix I, roll call 156].

Mr. Lovell moved to amend the article by striking out the fourth, fifth, seventh, and eleventh sections and inserting the amendment which was offered by him yesterday.

Mr. Lovell said that although he was aware the convention was anxious to come to a vote on the article, he must as briefly as possible state his reasons for offering this amendment. One object was to reconcile the opinions of those who were in favor of and opposed to a separate supreme court. He thought many of the objections to both the propositions which had been offered would be obviated by his amendment.

Mr. Lovell then sketched to the convention the several features of his proposed amendment. He said that he feared the system as it

was reported would work badly. The term of office was cut down to five years, and one judge would go out each year. Many lawyers of sufficient capacity and standing could not be found who would be willing to leave a lucrative practice to go on the bench, at the hazard of being turned out at the expiration of a single year. The argument that they would be reëlected by the people was not a good one. It was true that the people would reëlect a good judge if they had a fair chance of knowing him to be so; but in one year he would have no chance of displaying his abilities. For this reason he favored the proposition which had been made by Mr. Lakin, of the judges going out in two and three years. He had left the term blank in his amendment and hoped that it might be filled with a term of from two to six years.

Mr. Dunn remarked that the proposition now submitted was, in his opinion, one and identical with that which had been offered by the gentleman from Brown (Mr. Martin). If so, it had been before the minds of members of the convention since the time that that proposition had been offered, and they were now as ready to vote for it as at any other time.

Mr. Lovell moved a call of the convention, which was ordered; and Messrs. Biggs, Carter, A. G. Cole, Colley, Crandall, Fox, Hollenbeck, McClellan, Schoeffler, Ward, Warden, and Wheeler reported as absent.

Mr. Richardson moved that Messrs. Wheeler and Fox be excused from their attendance, which was agreed to; Mr. Sanders moved that Mr. A. G. Cole be excused from his attendance, which was agreed to. Mr. Judd moved that all further proceedings under the call be dispensed with, which was agreed to.

Mr. Jackson moved that the convention take a recess until half past two o'clock P.M., which was agreed to.

HALF PAST TWO O'CLOCK P.M.

No. 7, article on the judiciary, was then taken up, when Mr. Whiton moved a call of the convention, which was ordered; and Messrs. Biggs, Castleman, Crandall, Estabrook, Fitzgerald, Fox, Harrington, McClellan, Nichols, Schoeffler, and Wheeler reported as absent.

Mr. Jackson moved that Mr. Schoeffler be excused from his attendance, which was agreed to; Mr. Jackson moved that Mr. McClellan be excused from his attendance, which was disagreed to; Mr. Judd moved that Mr. Estabrook be excused from his attendance, which was disagreed to; Mr. Richardson moved that Messrs. Fox and Wheeler be excused from their attendance, which was disagreed to; Mr. O'Connor moved that Mr. Nichols be excused from his attendance, which was disagreed to; Mr. McDowell moved that Mr. Biggs be excused from his attendance, which was agreed to; Mr. Sanders moved that Mr.

was reported would work badly. The term of office was cut down to five years, and one judge would go out each year. Many lawyers of sufficient capacity and standing could not be found who would be willing to leave a lucrative practice to go on the bench at the hazard of being turned out at the expiration of a single year. The argument that they would be re-elected by the people was not a good one. It was true that the people would re-elect a good judge if they had a fair chance of knowing him to be so; but in one year he would have no chance of displaying his abilities. For this reason he favored the proposition which had been made by Mr. Lakin, of the judges going out in two and three years. He had left the plank in his amendment and hoped that it might be filled with a term of from two to six years.

Mr. Dunn remarked that the proposition now submitted was, in his opinion, one and identical with that which had been offered by the gentleman from Brown (Mr. Martin). If so, it had been before the minds of members of the convention since the time that that proposition had been offered, and they were now as ready to vote for it as at any other time.

Mr. Lovell moved a call of the convention, which was ordered; and Messrs. Biggs, Carter, A. G. Cole, Colby, Cranhall, Fox, Harrington, McClellan, Schoeller, Ward, Wheeler and Wheeler reported as absent. Mr. Richardson moved that Messrs. Wheeler and Fox be excused from their attendance, which was agreed to; Mr. Sanderson moved that Mr. A. G. Cole be excused from his attendance, which was agreed to; Mr. Todd moved that all further proceedings under the call be dispensed with, which was agreed to. Mr. Jackson moved that the convention take a recess until half past two o'clock P.M., which was agreed to.

HALF PAST TWO O'CLOCK P.M.

Mr. V. article on the Judiciary, was then taken up, when Mr. Whitton moved a call of the convention, which was ordered; and Messrs. Biggs, Cranhall, Estabrook, Harrington, Fox, Harrington, McClellan, Nichols, Schoeller, and Wheeler reported as absent. Mr. Jackson moved that Mr. Schoeller be excused from his attendance, which was agreed to; Mr. Jackson moved that Mr. McClellan be excused from his attendance, which was disagreed to; Mr. Todd moved that Mr. Estabrook be excused from his attendance, which was disagreed to; Mr. Richardson moved that Messrs. Fox and Wheeler be excused from their attendance, which was disagreed to; Mr. O'Connor moved that Mr. Nichols be excused from his attendance, which was disagreed to; Mr. McDowell moved that Mr. Biggs be excused from his attendance, which was agreed to; Mr. Sanders moved that Mr.

Castleman be excused from his attendance. And pending the question thereon, Mr. Gifford moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 12, negative 45; for the vote see Appendix I, roll call 157].

Mr. Judd moved that all further proceedings under the call be dispensed with. And the question having been put, it was decided in the negative. And a division having been called for, there were 24 in the affirmative and 26 in the negative.

Mr. Judd moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 17, negative 40; for the vote see Appendix I, roll call 158].

Mr. Judd moved to suspend all further proceedings under the call. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 31; for the vote see Appendix I, roll call 159].

Mr. Scagel moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 37; for the vote see Appendix I, roll call 160].

Mr. Beall moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 38; for the vote see Appendix I, roll call 161].

Mr. Foot moved that all further proceedings under the call be dispensed with. And the question having been put, it was decided in the negative. And a division having been called for, there were 24 in the affirmative and 24 in the negative.

Mr. Larrabee, by unanimous leave of the convention, asked that Mr. Hollenbeck be excused from his attendance, which was agreed to; when on motion of Mr. Gale the convention adjourned.

Castelman be excused from his attendance. And pending the question thereon, Mr. Clifford moved that the convention adjourn. And the question having been put, it was decided in the negative. And the eyes and nose having been called for and ordered, those who voted in the affirmative were [affirmative 17, negative 48]; for the vote see Appendix I, roll call 187.

Mr. Tudd moved that all further proceedings under the call be dispensed with. And the question having been put, it was decided in the negative. And a division having been called for, there were 34 in the affirmative and 23 in the negative.

Mr. Tudd moved that the convention adjourn. And the question having been put, it was decided in the negative. And the eyes and nose having been called for and ordered, those who voted in the affirmative were [affirmative 17, negative 40]; for the vote see Appendix I, roll call 188.

Mr. Tudd moved to suspend all further proceedings under the call. And the question having been put, it was decided in the negative. And the eyes and nose having been called for and ordered, those who voted in the affirmative were [affirmative 28, negative 31]; for the vote see Appendix I, roll call 189.

Mr. Seegal moved that the convention adjourn. And the question having been put, it was decided in the negative. And the eyes and nose having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 37]; for the vote see Appendix I, roll call 190.

Mr. Hall moved that the convention adjourn. And the question having been put, it was decided in the negative. And the eyes and nose having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 38]; for the vote see Appendix I, roll call 191.

Mr. Foot moved that all further proceedings under the call be dispensed with. And the question having been put, it was decided in the negative. And a division having been called for, there were 34 in the affirmative and 24 in the negative.

Mr. Larabee, by unanimous leave of the convention, asked that Mr. Hollenbeck be excused from his attendance, which was agreed to; when on motion of Mr. Gale the convention adjourned.

MONDAY, JANUARY 24, 1848

Prayer by the Rev. Mr. Lord.

The journal of Saturday was read.

Mr. Rountree presented the returns of the census of Grant County, taken by order of the board of county commissioners of said county, and moved that the same be referred to committee No. 2, with instructions to inquire into the expediency of reporting an additional member of the house of representatives for said county.

Mr. Rountree made a statement of the number of representatives to which Grant County would be entitled under the basis of apportionment, by which he showed that by the new census returns Grant County had a population nearly sufficient to entitle it to one more representative than had been apportioned to it. Mr. Lovell stated that he had calculated the returns now received from the county of Grant and found that it was entitled, or nearly so, according to those returns, to an additional member of the legislature. But he must add that the same was true of Waukesha and Washington counties and he could not go for a change which would not change the entire representation. Mr. Kilbourn wished barely to remark that the proposition of Mr. Rountree must necessarily (if adopted by the convention) lay open the entire subject of apportionment. It was known that there were two or three counties in the same situation, and it could not be denied that these counties were entitled to an addition under the official census. He did not know that the census now brought up from Grant County formed proper data for the action of this convention; or that they could give one more member to Grant than it was entitled to under the official census, without giving members to Waukesha, Washington, and Jefferson, which were also nearly entitled under that census. If the official census were abandoned in the case of Grant, where would this matter end? Every county might put in a new census, and the legislature would run up to its maximum number before they got through.

Mr. Rountree said that it was true that the official returns of Grant County made the population amount to only 11,125. But so soon as the report was made the commissioners, believing it to be incorrect, had met and appointed a competent person to take the census. He had no doubt of its exactness. He would ask the gentleman from Milwaukee who had just spoken, if any other county had sent up any returns in addition to the official ones. On what

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Mr. Rountree said that it was true that the official returns of Grant County made the population amount to only 11,125. But so soon as the report was made the commissioners, believing it to be incorrect, had met and appointed a competent person to take the census. He had no doubt of its exactness. He would ask the gentleman from Milwaukee who had just spoken, if any other county had sent up any returns in addition to the official ones. On what

ground did he state that other counties were in the same situation? The official census taker of Grant, as soon as the subject was agitated in that county, acknowledged that he had not been very particular in taking the census, that he had made errors, and did not claim anything from the county for his services. Thus an error is evidently shown. Would gentlemen cut the county off from what it was entitled to, because there had been an error in the taking of the census? He did not think any gentleman would propose such a measure of injustice.

Mr. Kilbourn said that the gentleman from Grant seemed to think he intended to do injustice to his county. Such was not the fact. He was willing to do as much for Grant as for any other county. But he could not vote for doing for Grant, under the present return, what was denied to other counties under the official. The only question to decide was whether they should open the whole subject anew.

Mr. Rountree remarked that the person who took the census was not appointed by the governor, but by the county commissioners; that he had acted under oath; and the return came up as fully authenticated as it was possible for it to be without the commission of the governor. It must be recollected by gentlemen that when the subject of apportionment was under consideration, he requested that the article should be laid on the table in order to receive the returns from Grant before the apportionment should be made. It was laid on the table for a few days, when he agreed to have it taken up, believing that the convention would do full justice to his county when the returns should be received.

Mr. Gifford offered an amendment to the instructions requiring the committee to report one more member for Waukesha.

Mr. Castleman moved to amend the instructions so as to give Washington, Walworth, and Rock, each, four representatives and two senators.

Mr. Sanders suggested to the gentleman from Grant to let the subject lie upon the table until tomorrow. Mr. Rountree declined. He asked only to have the returns referred to the committee with instructions to report. If the report should be adverse, he would have nothing more to say.

The amendment was disagreed to, and the question being on committing, Mr. Chase called for a division of the question. The question was then put upon committing, which was agreed to.

Mr. Lovell moved to amend the instruction by adding the following: "and also to such other counties as may be entitled to additional representation, such additional representation," which was agreed to. And a division having been called for, there were 29 in the affirmative and 11 in the negative.

The question was then put upon the instructions as amended.

Mr. Jackson was opposed to the proposition. It would involve the convention in difficulty. After giving Grant County an additional member, it would be necessary to do as much for Walworth, Waukesha, Washington and Jefferson. There would be no end to the difficulty.

Mr. Beall spoke. Mr. Judd made a few remarks.

The question was then taken and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28, negative 37; for the vote see Appendix I, roll call 162].

Mr. Prentiss, from the committee on schedule and miscellaneous provisions, made the following report:

"The committee on schedule and miscellaneous provisions, in accordance with instructions of the convention, respectfully report the following, to stand as a section in the article on the executive: 'Section —. The governor may in cases of emergency convene the legislature at any other time than that prescribed in the constitution, and in case of invasion or danger from the prevalence of contagious disease at the seat of government he may in like manner convene the legislature at any other suitable place in the state.'

THEODORE PRENTISS

JOHN L. DORAN

E. P. COTTON

J. WARD

JOSEPH COLLEY"

Mr. Dunn, from the committee on revision and arrangement, made the following report:

"The committee on revision and arrangement respectfully report the articles on finance, internal improvements, militia, and on eminent domain and property of the state, with corrections and suggestions, in which they ask the concurrence of the convention.

MILITIA

"Recommend that this article be added as a section to the legislative article."

TAXATION AND FINANCE

"Section 1. Strike out 'throughout the state.'

"Section 2. Strike out 'of the state.'

"Section 5. Strike out in line three 'of the state' and in line four 'of the state for such year'; and in line six 'of the preceding year,' and for 'together with' substitute 'as well as'; and insert 'of the state' after 'expenses' in the second line.

"Section 6. Strike out in line two 'singly or'; also in the ninth and tenth lines 'also a tax sufficient to pay' and 'of such debt'; and in the fifteenth line strike out 'and such' and insert 'nor the'; also in the same line after 'taxes' strike out 'shall not.'

"Section 7. Alter to read as follows: 'The legislature may also borrow money to repel invasion, suppress insurrection, or defend the state in time of war; but the money thus raised shall be applied exclusively to the object for which the loan was authorized or to the repayment of the debts thereby contracted.'

"Section 9. Alter to read: 'No scrip, certificate, or other evidence of state debt whatever shall be issued, except for such debts as are authorized by the sixth and seventh sections of this article.'"

INTERNAL IMPROVEMENTS

"Section 1. The state shall never contract any debt for works of internal improvement or be a party in carrying on such works; but whenever grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such particular works, and shall devote the avails of such grants and may pledge or appropriate the revenues derived from such works in aid of their completion.'

"And to be added to finance article."

EMINENT DOMAIN

"Section 1. Alter so as to read: 'The state shall have concurrent jurisdiction on all rivers and lakes bordering on this state, so far as the said rivers or lakes,' etc.

"Section 2. Prefix the words 'the title to.'

"Section 4. Strike out in fourth line the word 'state.'"

Mr. Judd moved that the motion made by him on a previous day for a reconsideration of the vote taken on the eighth instant, on the final passage of No. 14, article on legislative, be taken up, which was agreed to.

The question was put upon reconsidering and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 45, negative 21; for the vote see Appendix I, roll call 163].

Mr. Judd moved that the article be referred to committee No. 2 with instructions so to amend section 5 as to provide for the election of senators for

TAXATION AND FINANCE

"Section 1. Strike out throughout the state."

"Section 2. Strike out 'of the state'."

"Section 3. Strike out in line three of the state, and in line four of the state for each year; and in line six of the preceding year, and for 'together with' substitute 'as well as'; and insert 'of the state' after 'expenses' in the second line."

"Section 4. Strike out in line two 'andly or'; also in the ninth and tenth lines 'also a tax sufficient to pay' and 'of such debts'; and in the eleventh line strike out 'and such' and insert 'not less'; also in the same line after 'taxes' strike out 'shall not'."

"Section 5. After to read as follows: 'The legislature may also borrow money to repel invasion, suppress insurrection, or defend the state in time of war; but the money thus raised shall be applied exclusively to the object for which the loan was authorized or to the repayment of the debts thereby contracted.'"

"Section 6. After to read: 'No scrip, certificate, or other evidence of state debt whatever shall be issued, except for such debts as are authorized by the sixth and seventh sections of this article.'"

INTERNAL IMPROVEMENTS

"Section 1. The state shall never contract any debt for works of internal improvement or be a party in carrying on such works; but whenever grants of land or other property shall have been made to the state, especially dedicated by the grant to particular objects of internal improvement, the state may carry on such particular works and shall devote the avails of such grants and may pledge or appropriate the revenues belonging to such works in aid of their completion."

"And to be added to finance article."

EMINENT DOMAIN

"Section 1. After so as to read: 'The state shall have eminent domain jurisdiction on all rivers and lakes bordering on this state, so far as the said rivers or lakes, etc.'"

"Section 2. Prefix the words 'the title to'."

"Section 3. Strike out in fourth line the word 'state'."

Mr. Judd moved that the motion made by him on a previous day for a reconsideration of the vote taken on the eighth instant on the final passage of No. 14, article on legislative be taken up, which was agreed to. The question was put upon reconsideration and was decided in the affirmative. And the yeas and nays having been called for and ordered, those who voted in the affirmative were [affirmative 45, negative 21; for the vote see Appendix I roll call 143].

Mr. Judd moved that the article be referred to committee No. 2 with instructions so to amend section 2 as to provide for the election of senators for

the term of two years and for so classifying them that one-half, as near as may be, shall go out of office at the end of each year.

Mr. Estabrook moved that the committee be further instructed to amend section 25 by striking out the word "shall" and inserting the word "may."

And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 36; for the vote see Appendix I, roll call 164].

Mr. Doran moved that the committee be further instructed to strike out section 25.

Mr. Doran assigned as his reason for offering this amendment that it would be perfectly impossible to carry out the principles contained in the article. It was absurd to suppose that a state officer could be bound to let out a contract without having an interest in it, if he thought proper. As regarded the printing, he could anticipate a state of things, such as had already occurred in one portion of the United States, where all the printers might combine together and put the state to great inconvenience. He hoped no such provision would be left in the constitution. As regarded the officer, it was absurd; and as regarded the printing, it would be attended with very great inconvenience.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 25, negative 40; for the vote see Appendix I, roll call 165].

Mr. Folts moved that the committee be further instructed to strike out in section 21 the words "and a half." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 25, negative 40; for the vote see Appendix I, roll call 166].

Mr. Chase moved to amend the instructions of the committee by striking out the last clause, which was disagreed to.

Mr. O. Cole moved to amend the instructions of the committee by adding in section 4 after the word "county" the word "precinct," which was accepted by Mr. Judd as a modification of his motion.

The question was then put upon committing with the instructions as modified, and was decided in the affirmative.

Mr. Lyman, by leave, introduced the following resolution, to wit: "*Resolved*, That the committee on judiciary inquire into the expediency of providing for a uniformity in deeds for the conveyance of real estate."

The report of the committee on revision and arrangement was then taken up, and the amendments as reported by the committee to articles militia, finance, internal improvements, and on eminent domain were then severally concurred in.

the term of two years and for so classifying them that one-half, as near as may be, shall go out of office at the end of each year.

Mr. Katsbrook moved that the committee be further instructed to amend section 25 by striking out the word "shall," and inserting the word "may." And the question having been put, it was decided in the negative. And the yeas and nays having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 26; for the vote see Appendix I, roll call 184].

Mr. Doran moved that the committee be further instructed to strike out section 25.

Mr. Doran assigned as his reason for offering this amendment that it would be perfectly impossible to carry out the principles contained in the article. It was absurd to suppose that a state officer could be bound to let out a contract without having an interest in it, if he thought proper. As regarded the printing, he could anticipate a state of things, such as had already occurred in one portion of the United States, where all the printers might combine together and put the state to great inconvenience. He hoped no such provision would be left in the constitution. As regarded the officer, it was absurd; and as regarded the printing, it would be attended with very great inconvenience.

The question was then put and was decided in the negative. And the yeas and nays having been called for and ordered, those who voted in the affirmative were [affirmative 25, negative 40; for the vote see Appendix I, roll call 185]. Mr. Fols moved that the committee be further instructed to strike out section 21 the words "and a bill." And the question having been put, it was decided in the negative. And the yeas and nays having been called for and ordered, those who voted in the affirmative were [affirmative 25, negative 40; for the vote see Appendix I, roll call 186].

Mr. Chase moved to amend the instructions of the committee by striking out the last clause, which was disagreed to.

Mr. O. Cole moved to amend the instructions of the committee by adding in section 4 after the word "county," the word "precinct," which was accepted by Mr. Lusk as a modification of his motion.

The question was then put upon committing with the instructions as modified, and was decided in the affirmative.

Mr. Lyman, by leave, introduced the following resolution, to wit: "Resolved, That the committee on judiciary inquire into the expediency of providing for a uniformity in deeds for the conveyance of real estate."

The report of the committee on revision and arrangement was then taken up, and the amendments as reported by the committee to articles relating to finance, internal improvements, and on sundry demands were then severally concurred in.

Mr. Dunn moved that the said article be recommitted to the committee, which was agreed to.

No. 7, article on judiciary, was then taken up. Mr. King moved to amend section 7 by striking out all after the word "office" and inserting "in two years, one in three years, one in four years, one in five years, and one in six years, and thereafter the judge elected to fill the office shall hold the same for six years." And the question having been put, it was decided in the affirmative.

Mr. Lakin moved to amend section 13 by adding as follows: "*Provided*, also, A majority of the circuit judges, for like cause and in like manner, may remove from office the members of the senate and house of representatives; and in all such cases a special entry shall be made on a special docket kept for that purpose, and shall be published in some weekly newspaper to be designated by said judges for three successive weeks."

Mr. Lakin said it was well known that he was opposed to section 13. He did not suppose that the amendment would prevail, nor did he greatly care, but felt bound to do his duty so far as he understood it and wished to give the judiciary some chance. It was not fair to tie their hands behind them and suffer them to be voted out of office. If it was provided that their constituents should vote them out, it would be fair enough. It seemed to him that it was but right to give the judiciary a chance to vote out the legislature, and so put them on an equal footing.

Mr. Harvey asked if the gentleman from Grant desired to let loose the tigers of the bench, the lions of the bar, and the hyenas of the legislature.

The question was then put and was decided in the negative.

Mr. Kinne moved to amend the article by striking out section 18.

Mr. Larrabee said he should vote for the motion because he found it asserted in the bill of rights that justice should be free to all. If the section were retained, every person would be obliged to purchase justice.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 35; for the vote see Appendix I, roll call 167].

Mr. Kinne moved to amend section 18 by striking out the words "municipal, inferior, and civil courts" and inserting the word "circuit"; also, by adding to the section the words "of said courts."

Mr. Kinne said he felt great diffidence in delaying the action of the committee on the article, but he felt it to be his duty to

propose this amendment. It was a maxim that all classes of men should be enabled to obtain justice freely. The amendment he proposed excluded the tax from causes commenced in justices' courts. He desired that the poor man might at least enjoy the poor privilege of coming before the tribunals of justice without money in his pocket to pay in advance. The amount of this tax must be something. If the legislature should adopt a very small tariff, it would not answer the purpose for which it was intended. It must amount to a considerable sum or it would do no good. Some were in favor of this provision on the ground that it would tend to prevent litigation. It was true it would have that tendency, but if the whole judicial system were abolished, the same end would be still more fully attained. If it prevented the commencement of unjust suits, it would likewise prevent the commencement of just ones.

Mr. Chase thought there was no hardship at all in requiring this amount to be paid in advance. Those who danced should pay the fiddler—those who commenced suits should pay the lawyers. It would all be charged in the bill of costs.

The amendment was disagreed to.

Mr. Doran moved to amend the article by striking out section 5 and inserting the following: "Section 5. The state shall be divided into three judicial circuits, to be composed as follows: The first circuit shall comprise the counties of Milwaukee, Racine, Waukesha, Walworth, Jefferson, and Rock. The second circuit shall comprise the counties of Brown, Manitowoc, Sheboygan, Washington, Dodge, Fond du Lac, Calumet, Winnebago, Marquette, and Portage. The third circuit shall comprise the counties of Columbia, Dane, Sauk, Green, Lafayette, Iowa, Grant, Crawford (including Chippewa for judicial purposes), and St. Croix (including La Pointe for judicial purposes); and there shall be a circuit judge elected for such circuit by the qualified electors of each circuit, who shall reside therein and hold his office for the term of five years."

Mr. Doran said that this amendment was one of those suggested by the gentleman from Brown (Mr. Martin) and that he had come to the conclusion that if there was no separate supreme court there was no use in having five judges. It could not be denied that the territory as it was now divided embraced in the district of one judge a population of 114,000, and that this judge spent a large portion of his time out of the territory, and that he could with ease discharge four times the amount of business that now

devolved upon him. If such was the fact (and it could not be denied), and if saving of expense was the object, there could be no objection to reducing the number of judges from five to three. It was a fundamental maxim to bring home responsibility on the shoulders of public officers. If there were five judges without business, the responsibility was lessened. They would say aye and no as circumstances dictated. On that principle alone it would be advisable to reduce the number of circuits and of judges and increase the responsibility.

Mr. Sanders said that if the gentleman from Milwaukee knew anything about his own court, he must know that the business was between one and two years behind.

Mr. Doran explained.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 5, negative 59; for the vote see Appendix I, roll call 168].

Mr. Lovell moved to amend section 4 by inserting after the word "decision" in the third line "but the supreme court shall never be composed of more than five judges, and whenever the number of circuits shall be increased the five judges having the shortest term to run shall constitute the supreme court." And the question having been put, it was decided in the negative.

Mr. Lovell moved to amend the article by striking out the fourth, sixth, and seventh sections and inserting as follows: "Section 4. The supreme court shall be composed of one chief justice and four associate judges, a majority of whom shall constitute a quorum, and the concurrence of a majority of whom shall be required to a decision. They shall be elected by the qualified electors of the state, and after the first election one of them shall go out of office at the end of two years and one at the end of each year thereafter; and the judges elected after the first election shall hold their offices for the term of six years"; also, add to section 5 as follows: "which circuits shall be subject to alteration as the legislature may from time to time provide; one of the judges of the supreme court shall be assigned to each circuit and shall hold the circuit courts thereof, but they may interchange circuits in such manner as the legislature shall prescribe." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 10, negative 54; for the vote see Appendix I, roll call 169].

Mr. Fox moved to amend section 9 by striking out in the third line all after the word "term," which was disagreed to.

Mr. O'Connor moved to strike out [section] 12 to the fifth line inclusive and insert: "There shall be appointed by the circuit judge of each district a clerk of the circuit court for each county organized for judicial purposes; and the clerks thus appointed shall give such security as the legislature may require." And the question having been put, it was decided in the negative.

Mr. Lovell moved to amend the original article as follows, to wit: "Strike out the fourth, fifth, sixth, seventh, and eleventh sections and insert five sections, to stand as follows:

"[Section 4.] The supreme court shall consist of a chief justice [and two associate justices], to be elected by the qualified electors of the state, any two of whom may hold the court. The legislature shall at its first session after the adoption of this constitution provide by law for classifying the justices of the supreme court in such manner that one of such justices shall go out of office every two years; and thereafter the justice elected to fill the office shall hold the same for six years.

"Section 5. The state shall be divided into three judicial circuits, to be composed as follows: The first circuit shall comprise the counties of Milwaukee, Racine, Waukesha, Walworth, Jefferson, and Rock. The second circuit shall comprise the counties of Brown, Manitowoc, Sheboygan, Washington, Dodge, Fond du Lac, Calumet, Winnebago, Marquette, and Portage. The third circuit shall comprise the counties of Columbia, Dane, Sauk, Green, Lafayette, Iowa, Grant, Crawford (including Chippewa for judicial purposes), and St. Croix (including La Pointe for judicial purposes).

"Section 6. There shall be a circuit judge elected for each circuit by the qualified electors of such circuit, who shall reside therein and hold his office for the term of five years.

"Section 7. The supreme court shall be held once in each year in each of the circuits, at such time and place as may be prescribed by law. A circuit court shall be held in each of the counties organized for judicial purposes at least twice in each year. The legislature shall also provide for holding one of said terms of the circuit court by one of the justices of the supreme court, but such justice shall exercise a common law jurisdiction only.

"Section 8. The legislature may alter the limits or increase the number of circuits, making them as compact as may be and bounding them by county lines; but such increase shall not exceed two, nor shall such alteration or increase have the effect to remove a judge from office. In case of an increase of circuits, the judge or judges shall be elected as provided in this constitution."

And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 15, negative 51; for the vote see Appendix I, roll call 170].

The question was then put upon ordering the article to be engrossed and read a third time, which was agreed to.

On motion of Mr. Carter the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, made the following report, to wit:

"The committee No. 2, to whom was referred the article legislative, with instructions, report the same back to the convention pursuant to their in-

structions, with the following amendments, viz.: Amend section 4 by inserting after the word 'county' in the third line the word 'precinct.' Also, amend section 5 by striking out 'annually' in the first line, and by adding to the section as follows: 'The senate districts shall be numbered in regular series; and the senators chosen by the odd-numbered districts shall go out of office at the expiration of the first year; and the senators chosen by the even-numbered districts shall go out of office at the expiration of the second year; and thereafter the senators shall be chosen for the term of two years.'"

Mr. Case moved to lay the report on the table. And the question having been put, it was decided in the negative. And a division having been called for, there were 16 in the affirmative and 26 in the negative.

The question was then put upon concurring in the amendments of the committee, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 22; for the vote see Appendix I, roll call 171].

Mr. O'Connor asked leave of absence for Mr. McDowell. Leave was granted. The question was then put upon the passage of the article. And the ayes and noes having been required by the rules, those who voted in the affirmative were [affirmative 45, negative 12; for the vote see Appendix I, roll call 172].

The convention then resolved itself into committee of the whole for the consideration of No. 15, article on miscellaneous provisions; No. 19, article on incorporations; No. 20, article on amendments, Mr. Castleman in the chair.

On motion of Mr. Judd the article on amendments was first taken up. The article was read. Mr. O'Connor offered an amendment providing that when the legislature deem it necessary they may submit the question to the people whether there shall be a revision of the constitution, and if decided in the affirmative pass a law for the calling of a new convention, the amendment also prescribing the maximum number of the body and the time of their assembly.

Mr. Chase thought the amendment superfluous, especially the latter part of it. If the legislature had the power thus to provide for a revision of the constitution, the question would be continually open and agitated. And as to the provision that the number of the convention should not exceed that of the legislature, such a convention would be in no way superior to the legislature, and the revising of the constitution could be left to the legislature as well. It was improper thus to lay restrictions on the convention. And, moreover, without the provision it would be the duty of the legislature to propose specific amendments to the people, when any were deemed necessary.

Mr. Judd spoke.

Mr. O'Connor said, if desired he had no objection to striking out the latter part of the amendment. Mr. Kilbourn had no objection as to the former part, but as to the latter regulating the number and time of assembly, he thought it entirely unnecessary. Mr. Chase said that with the modification the amendment meant nothing, as it merely gave the legislature a power which they would have possessed without it.

Mr. King did not agree with either of the gentlemen and could see no impropriety in the proposed amendment. There were two modes of amendment: First, when any specific amendment or one of no great consequence was desired. In this case the legislature would put it in form and submit it to a vote of the people. Second, when the whole structure and foundation of the constitution was to be remodeled. In that case it would be necessary to call a new convention. Without any provision conferring the power it might be doubtful whether the legislature would have the power to pass a law calling for the assembly of a convention to revise the constitution. That doubt and difficulty had occurred in New York, and this provision would prevent its occurrence here.

Mr. Dunn said as the amendment had been accepted, striking out the latter part of the section, it seemed that all the difficulty was obviated.

Mr. O'Connor said he had not accepted the amendment, and on reflection he preferred not to.

Mr. Kilbourn moved that the latter part of the section providing for the number of the convention and time of assembly be struck out, which was agreed to.

Mr. Whiton moved to amend the section further by inserting the words "at its next session," so that the legislature would be required to pass a law calling a new convention at its next session after it was called for by a vote of the people. The amendment was adopted.

The original amendment was then adopted.

On motion of Mr. King the article was laid aside, and the article on corporations was taken up.

Mr. Sanders moved to add three additional sections: section 1, providing that no corporation should be established without individual liability of the stockholders for corporate debts being required; section 2, that no corporation should possess any greater powers in relation to the issue and circulation of notes, certificates,

etc. as money, than any private partnership; and section 3, giving them the power to sue and be sued. Mr. Sanders said he had taken these sections mostly from the New York constitution. He thought they explained themselves sufficiently and would commend themselves to the favor of the convention.

Mr. Chase said the first section of the article on banking provided for all that the gentleman's amendment contemplated. As to the power of suing and being sued, the very establishment of a corporation necessarily supposed that. He thought that the whole amendment was unnecessary. Mr. Sanders said the object of the provision in the New York constitution in relation to suing, etc. was this: Under the old constitution, there being no provision on the subject, it was held that a corporation could not be sued in a justice's court. The amendment was introduced to remedy that defect. As to the prohibition of banking privileges, he inquired of the gentleman from Fond du Lac what there was in the bank article as at present to prevent, for instance, the Wisconsin Marine and Fire Insurance Company from issuing bills, certificates of deposit, etc. Mr. Chase in reply said the section would reach no individual case like that, nor ought it to. We were providing in general, not aiming at particular existing institutions. Mr. Sanders inquired if the Wisconsin Marine and Fire Insurance Company was not a corporation created by the legislature. Mr. Chase replied that it was not.

Mr. Whiton spoke.

The amendment was lost.

Mr. King offered an amendment to the effect that no municipal corporation should take away the private property of any citizen unless the necessity of it should be established by the verdict of a jury, which was adopted.

Mr. Lovell offered an amendment to stand as section 3, making it the duty of the legislature to provide for the organization of city and town corporations, etc., which was adopted.

Article 15 was then taken up and read. On motion of Mr. Kilbourn the fourth section was struck out, the same provision being contained elsewhere.

Mr. Estabrook moved to amend by striking out "day" and inserting "Monday" (the commencement of the political year), which was adopted, 24 to 18.

On motion of Mr. King the fifth section was struck out.

On motion of Mr. Chase section 3 was amended by striking out "postmasters excepted."

Mr. Whiton offered an amendment by adding to section 1 the following words: "The general election shall be held on Tuesday succeeding the first Monday of November," etc. The amendment was adopted.

Mr. Kilbourn offered as an amendment to the article a separate section relating to the officers of the legislature. He said that there was great trouble at every session in the election of these petty officers. Candidates came up from almost every county in the territory, and many had to go away disappointed, after all their electioneering. This system produced great vexation and loss of time not only to them, but also to the members. The amendment he proposed would simplify all this and make it much more economical and less troublesome to the legislature.

Mr. Rountree thought it was very necessary to have such a provision. The method heretofore had caused great trouble and expense—much more than might be supposed by those not familiar with the facts in the case. Three times as many officers were chosen as were necessary, and \$1,000 was wasted. It was highly proper, he thought, to provide a remedy for this evil in the constitution. Mr. Dunn thought differently. He thought it would be difficult for us to imagine what would be the wants of future legislatures, and provide for them fully in advance. If we could do so, it might be well enough for us to provide for them; but as we could not, he thought we should not make the attempt and fetter them in such small matters relating to their convenience, which were always in other states left to them.

Mr. Kilbourn said the amendment provided for all the officers which were elected by Congress and by many state legislatures, and so provided for all possible emergencies. The regular officers might choose any number of assistants. The only object of putting it in the constitution was to save the trouble and teasing of legislatures and the useless expense of sinecures.

Mr. Beall spoke.

Mr. King said the only effect would be to transfer the teasing from the legislature to the chief clerk and sergeant at arms.

Mr. Fenton offered an amendment to the amendment, providing "that said offices be let out to the lowest bidder." The amendment was adopted.

Mr. Chase moved to amend by striking out all after the words "sergeant at arms. Mr. Kilbourn accepted the amendment.

Mr. Whiton spoke. Mr. Judd spoke.

Mr. Rountree, in addition, said the expense of the system heretofore pursued was very great. Any gentleman who would look on the appropriation bills for the last ten years would see that the pay of officers amounted to a very large share of the legislative expenses. Counties had always sent up their candidates for these offices. Some fourteen had usually been apportioned and they had been fought for and depended on as legitimate spoils so long that it had become an established habit. He was satisfied that the old system had become so fixed that it could not be broken up except by a constitutional provision. He was therefore not willing to leave it to the legislature but would leave it to the constitution.

Mr. Dunn said he was surprised to see this provision supported so zealously and claimed as a great Democratic measure. If that was Democratic, he had not known what Democracy consisted in. It was giving to the chief clerk and sergeant at arms more patronage than to the governor. He thought the servants of the people—the legislature—should keep the patronage in their own hands, as they were responsible for the performance of the duties.

The amendment was adopted, 29 to 11. The article as amended was then adopted, 30 to 17.

Mr. Kennedy offered an amendment, providing that electors residing on Indian lands might be allowed to vote in adjacent counties. Mr. Judd suggested that the amendment should be so amended as to apply only to Indian lands not included in any county. Mr. Kennedy remarked that in Portage County the courts held that they had no jurisdiction over Indian lands and that the sheriff had no authority to execute process therein. Mr. Kilbourn remarked that all the land in the territory would probably ere long be divided into counties, and then the article on the elective franchise would secure the rights of those residing therein. Till then, the legislature could confer the elective franchise on residents on Indian lands by attaching them to adjoining counties. But the terms of this proposition would allow residents on Indian lands out of the bounds of the state to come in and vote.

Mr. Judd spoke.

Mr. Martin suggested to the mover to strike out the word "adjacent" and insert "which includes." The legislature had decided in a case which came up in 1840 that votes cast within Indian territory were bad. He thought, to exclude all doubt hereafter, it should be provided in the constitution that such votes should be legal and that the process of the courts might be executed within Indian territory. Mr. Chase did not apprehend there was any necessity for such a provision in the constitution. The legislature had the power to do all that was necessary in the premises and would doubtless exercise it when called upon to do so. Mr. Reed said that by a law of Congress individuals could not gain a residence in Indian territory. The construction put upon that law was that the residence of persons who went into Indian territory continued in the county from which they came. This provision, therefore, did not seem to be called for.

Mr. Featherstonhaugh offered a substitute, which was accepted by Mr. Kennedy and adopted by the convention.

The committee then rose and by their chairman reported No. 19, article on incorporations, and No. 20, article on amendments, with sundry amendments thereto, and asked the concurrence of the convention therein; and also reported progress on No. 15, article on miscellaneous provisions, and asked leave to sit again thereon. Leave was granted.

No. 19, article on incorporations, was then taken up, and the question being on concurring in the amendments of the committee, Mr. Chase called for a division of the question. The question was then put upon concurring in the first amendment, which was to add as an additional section: "No municipal corporation shall take private property for public use against the consent of the owner without the necessity thereof being first established by a verdict of a jury."

Mr. Kilbourn said he hoped the amendment would not be concurred in. A sufficient provision on that subject had already been made in the bill of rights, and it was not to be assumed that the legislature would authorize the taxing of private property for public use unless the necessity of it were properly demonstrated and adequate compensation rendered. And in some cases such a provision might have an injurious effect in preventing municipal corporations from opening streets or the like, which public convenience required. It would operate as a great restraint upon them.

Mr. King hoped the amendment would be concurred in. The whole object of it was to restrict municipal corporations from taking property at their discretion, as they had done heretofore. All who had lived in a city knew well what a grievance it was to be subject to have their property taken from them against their will, and instead of any compensation being made, their burdens actually increased thereby, as in the case of taking land to make a street and then taxing the owner to open it.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 44, negative 17; for the vote see Appendix I, roll call 173].

The question being on concurring in the second amendment of the committee, which was to add a new section as follows: "Section —. It shall be the duty of the legislature to provide for the organization of cities and incorporated villages and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit so as to prevent abuses in assessment and taxation, and in contracting debts by such municipal corporations,"

Mr. Kilbourn said if we were engaged in enacting laws about city corporations this might be a proper provision, but he thought it was not now. It should be remembered that the powers spoken of would not be possessed by cities unless specially granted. When a charter was granted, the legislature might insert such restrictions as they chose. To prohibit the legislature from granting to cities the power of contracting debts according to their necessities and their discretion might operate very injuriously in some instances.

Mr. Lovell remarked that so far nothing was said in the constitution about city and village corporations. Now it was necessary for them to have certain powers of local legislation, and without providing for the granting of them in the constitution it might be questioned whether after providing that all legislative power should be vested in the senate and house of representatives it would be constitutional to vest any such power in municipal corporations. As to the abuses which the amendment was designed to restrain, they were very numerous and oppressive. The same provision had been inserted in the New York constitution, and there was no minor provision which gave more general satisfaction. He saw nothing in

the argument of the gentleman from Milwaukee which changed his views with regard to the propriety of the article.

Mr. Doran said that we thus again had the idea advanced that the people were not able to take care of themselves. When the New York constitution was framed the new light which we now enjoy had not dawned. Then it was not known that it was anti-democratic for the general government to improve rivers and harbors. If such a provision as this should be adopted and Milwaukee, for instance, should thus be prohibited from contracting a debt for the improvement of her harbor, there was no way provided in which it could be done. The last chance would be cut off. The general government had discovered that it had no power to do it. The act on internal improvement prohibited the state from doing it; and now this would prohibit the city itself from doing it. He thought it was utterly impossible for the legislature to understand the wants and interests of cities and towns in making these local improvements, as well as the cities and towns themselves, and he therefore hoped the amendment would not be concurred in.

Mr. Lovell said the article was copied from the New York constitution, and it would not prevent, as the gentleman had supposed, the improvement of harbors, etc. It only provided against abuses.

Mr. Whiton moved to amend the amendment by inserting after the word "legislature" the words "and they are hereby empowered," which was agreed to.

The question was then put upon the amendment as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 38, negative 18; for the vote see Appendix I, roll call 174].

The question was then put upon ordering the article to be engrossed for a third reading, and was decided in the affirmative.

No. 20, article on amendments, was then taken up. And the question having been put upon concurring in the amendment of the committee, which was: "At any time if a majority of the senate and house of representatives shall deem it necessary that a convention should be called to revise, amend, or change this constitution, they shall submit this question to the people at the next annual election for members of the legislature, whether they are for or against calling a convention, and if a majority of the qualified voters in the state [voting] thereon shall be in favor of calling such convention, then the legislature shall provide at its next session thereafter for an election of delegates to meet in convention for that purpose," it was decided in the affirmative.

The question was then put upon ordering the article to be engrossed for a third reading, and was decided in the affirmative.

The convention then resolved itself into committee of the whole for the consideration of No. 8, resolution relative to lands in the Fox and Wisconsin River grant, Mr. Root in the chair.

Mr. Chase thought the first resolution was unnecessary, as the committee on revision would attend to the subject of it in connection with others of the same nature. As to the amendment offered, he had some question as to its propriety. If intended to make the first resolution a direction to the legislature, then it should be put in the constitution. If left out of the constitution it would not be obligatory but merely an expression of opinion. It was of no use where it was.

Mr. Reed replied that if the resolution were adopted it would make it obligatory on the committee of revision to attach it or the substance of it to the constitution, which it would not be otherwise. He thought the resolution itself explained its object sufficiently.

Mr. Richardson moved to strike out the second resolution. He did not fully understand the object of the resolution, but thought if it was intended to secure the right of preëmption to the settlers it should be put into the body of the constitution. Mr. Chase agreed with the gentleman from Grant (Mr. Richardson). He thought it would amount to nothing as it stood. It should be in the body of the constitution, and he would therefore support the motion to strike it out here and go for its insertion in the body of the constitution.

Mr. Reed expressed his surprise that gentlemen at this stage of proceedings should express ignorance upon the subject. For the information of such gentlemen he would state that a law had been passed by Congress, granting a quantity of land to aid in the improvement of the Fox and Wisconsin rivers; that under the operation of said law a large tract of land six miles in width, extending from Green Bay to Fort Winnebago, was withheld from sale and must be so withheld, to the great injury of the interests of the northern portion of the territory, until some action was had by the government of Wisconsin. The object of these resolutions was to secure directly to the settlers the right of preëmption to these lands at \$1.25 per acre. If these resolutions should pass *together*, the one asking Congress to grant preëmptions at \$1.25 per acre would receive great additional weight from the fact that the state

had granted that right to the settlers upon her portion of the reservation. Strike out this resolution and the whole object intended to be secured would be lost and that tract of country remain under the same embarrassment as heretofore. If these resolutions should pass as presented, it guaranteed to the settlers upon the state lands the purchase of their lands by preëmption just as effectually as though inserted in the body of the constitution. And here he must be allowed to express his surprise that one so largely interested in this matter as the honorable gentleman from Fond du Lac (Mr. Chase) should take occasion to oppose these resolutions, the passage of which was so essential to the prosperity of that part of the territory which that gentleman, in common with himself, in part represented in the convention.

Mr. Kilbourn here explained and Mr. Richardson withdrew his motion to strike out, which motion was renewed by Mr. Chase and was lost.

After some further remarks by different gentlemen, the amendment was adopted, 22 to 13.

After some further motions and remarks, which led to no result, the committee rose and by their chairman reported the same back to the convention with an amendment.

The question being on concurring in the amendment of the committee, which was: "*Resolved*, That the foregoing resolution be appended to and signed with the constitution and submitted therewith to the people of this territory and to the Congress of the United States," Mr. Judd moved that the convention adjourn, which was disagreed to. And a division having been called for, there were 15 in the affirmative and 24 in the negative. The amendment of the committee was then concurred in.

The question was then put upon the adoption of the resolution, and was decided in the affirmative. On motion of Mr. Folts the convention adjourned.

"*Resolved*, That the foregoing resolutions be signed by the president and countersigned by the secretary, and deposited in the office of the secretary of state."

Resolution No. 1, introduced by Mr. Reymert on the twenty-second instant, was taken up, when Mr. Castleman moved to amend the second resolution by striking out the words "o'clock P.M.," which was agreed to. Mr. Reymert moved to amend the first resolution by striking out the word "Congress" and inserting the word "enroll"; also by striking out the words "of the committee of the whole," which was agreed to. The resolution as amended was then adopted.

Resolution No. 2, introduced by Mr. Carter on the twenty-second instant, was taken up. Mr. Case moved to amend the resolution by substituting the

TUESDAY, JANUARY 25, 1848

Prayer by the Rev. Mr. Read.

The journal of yesterday was read.

Mr. Prentiss, from the committee on schedule and miscellaneous provisions, reported No. 21, article on schedule, which was read the first and second times and ordered to be printed.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 7, article on judiciary.

Mr. Fenton introduced the following resolution, to wit: "*Resolved*, That the convention will, for the remainder of the session, meet at 9 A.M. daily"; and moved that the fifth rule be suspended for the consideration of said resolution now. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 54, negative 6; for the vote see Appendix I, roll call 175].

The question was then put upon the adoption of the resolution, and was decided in the affirmative.

Mr. Estabrook introduced the following resolutions, which were read, to wit: "*Resolved*, That the patriotism, courage, and heroic achievements displayed by Captain Augustus Quarles and the men under his command who have fallen in Mexico while fighting under the flag of their country were mostly of the people of our infant state, and their names and acts deserve to be put in perpetual remembrance.

"*Resolved*, That it is recommended to the people of the state to erect by voluntary subscription a monument with suitable inscriptions in commemoration of the names and services of our fellow citizens above named, to be placed upon the public grounds in front of the capitol.

"*Resolved*, That it is hereby made the duty of the state treasurer to receive any moneys contributed as herein recommended, and the same shall constitute the 'Monument Fund,' to be expended in such manner as the legislature may prescribe for the objects contemplated in these resolutions, and no other.

"*Resolved*, That the presiding [officer] of this body be directed to appoint one or more persons, as may be deemed necessary, in each of the counties of this state, to receive subscriptions to said fund and transmit the same with the names of the donors to the treasurer of the state, to be reported to the legislature.

"*Resolved*, That the foregoing resolutions be signed by the president and countersigned by the secretary, and deposited in the office of the secretary of state."

Resolution No. 1, introduced by Mr. Reymert on the twenty-second instant, was taken up, when Mr. Castleman moved to amend the second resolution by striking out the words "o'clock P.M.," which was agreed to. Mr. Reymert moved to amend the first resolution by striking out the word "engross" and inserting the word "enroll"; also by striking out the words "of the committee of the whole," which was agreed to. The resolution as amended was then adopted.

Resolution No. 2, introduced by Mr. Carter on the twenty-second instant, was taken up. Mr. Case moved to amend the resolution by substituting the

following, to wit: "*Resolved*, That H. Tuttle be allowed \$48 for thirty-two days' services, to be paid out of the per diem allowance of doorkeeper and messenger, \$16 each; and the per diem allowance of the above-named officers is hereby reduced in conformity with this resolution," which was disagreed to. The question was then put upon the adoption of the resolution, and was decided in the negative.

Resolution No. 3, introduced by Mr. Biggs on the twenty-first instant, was taken up.

[Mr. Biggs: Mr. President—I have been induced to offer the resolution which has just been read, not only from a firm conviction on my own part that the proceedings of this convention on this subject as well as the one which preceded it were wrong, but also from the conviction that I should be sustained in the position I have assumed by a large majority of the people of this territory. Another consideration also, Mr. President, for offering this resolution was that I believe the law of Congress for the admission of Wisconsin into the Union was misunderstood by the greater part of the members of this convention, or rather that they were not aware that an interpolation had been made in the copies of that law which were annexed to the old constitution, and by which their action was governed both in this and in the last convention. By whom the interpolation was made or what were the motives, each member of this convention can determine for himself. I can see no other than to deter the convention from asserting the rights of the state and to induce them passively to submit to the dismemberment of her territory.

The general understanding of this law has been that Congress required us by an irrevocable ordinance to accept the boundaries prescribed by the act for our admission into the Union. There is nothing of the kind in the act. The ordinance of Congress of 1787 for the government of the Northwest Territory, or more particularly, the articles of compact in that ordinance, have always been understood and considered as the fundamental law or constitution of the said territory, and consequently, all laws passed in contravention of these articles of compact were unconstitutional so far as they relate to said territory. Such I believe has been the decision of the ablest jurists in the United States, whenever this law has come in question. I will now read the fifth article of compact, it being the only one which has reference to the question now under consideration.

"Article V: There shall be formed in the said territory not less than three, nor more than five states, and the boundaries of the states, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established, as follows, to wit: The western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north to the territorial line between the United States and Canada and by the said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio by a direct line due north from the mouth of the Great Miami to the said territorial line. The eastern state shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided*, however, and it is further understood and declared, That the boundaries of these three states shall be subject so far to be altered, that if Congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted by its delegates into the Congress of the United States on an equal footing with the original states in all respects whatever, and shall be at liberty to form a permanent constitution and state government. *Provided*, The constitution and government so to be formed shall be republican and in conformity to the principles contained in these articles."

The plain, common-sense interpretation of this article, as well as that given it by our wisest statesmen and jurists, is such as is contended for in this resolution. J. Q. Adams on the floor of Congress pronounced it a compact as binding as any that was ever ratified by God in heaven. Chancellor Kent calls the proviso in the fifth article a clear stipulation that an east and west line drawn through the southerly bend or extreme of Lake Michigan was to be the boundary line between the three states and any new state or states that might be formed north of that line, and that stipulation was binding unless withdrawn by common consent. If this is not a fair construction of the language of the proviso, it was useless to insert it so far as the two northern states are concerned.

Congress in the contest between Michigan and Ohio has virtually acknowledged the validity of this article; not indeed by restoring to her the little disputed slips of land (the inhabitants of which were all averse to coming under the government of Michigan) but by giving her in lieu thereof territory as large as some of the states of this Union.

From information elicited during the Michigan and Ohio contest there is, I think, good reason to believe that Congress in prescribing the northern boundary of Illinois, did not intend placing it north of an east and west line drawn through the southerly bend of Lake Michigan, the imperfect maps of that day placing the southern extreme of this lake in 45 degrees, 30 minutes north latitude. That the nonacceptance of the act of Congress defining our boundaries will prejudice our admission into the Union I cannot conceive. There is no such condition in the articles of compact in 1787. There is no such condition in the act of Congress either expressed or implied. There are in that act of Congress certain propositions set forth with which she asks our compliance and for which she offers an equivalent. To those we can cheerfully give our assent. Congress asks no more at our hands save a republican constitution.

Why such an article as that styled "Boundaries" should have a place in and form a part of our constitution I cannot conceive. It is volunteering on our part to perform an act which Congress has not required us to do, and the performance of which can in no way benefit us, but has every chance of proving an irreparable injury by forever closing the door to an equitable adjustment of our southern boundary, which Congress has so invitingly and justly left open. In the states which have been previously formed in the Northwest Territory Congress has by a proviso in the act authorizing them to form a state government required them to assent to the boundaries prescribed in the said act, which was all very right and proper as regards those states and in conformity with the Ordinance of 1787 which permitted Congress to form five instead of the three states originally established, and consequently to alter their boundaries and require their assent to such alteration. But in the case of Wisconsin, such a proviso would have been superfluous. Four states having been already formed, and the ordinance limiting the number that should be

formed in the Northwest Territory to five, it follows that the remaining territory must of necessity constitute the fifth state, over the limits of which no act of Congress has control unless by common consent.

For my own part, I do not feel tenacious about the matter. But I do feel anxious that this convention should give this question a reconsideration and at least go no further than Congress asks us to go. I would do nothing to endanger our admission into the Union; but I think this convention can in their wisdom leave this matter open for future adjudication. I think a large majority of the people of Wisconsin and also of the disputed territory in Illinois demand at least this at our hands.—*Tri-Weekly Express*, Jan. 27, 1848.]

The question was then put upon the adoption of the same, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 29, negative 26; for the vote see Appendix I, roll call 176].

Mr. O. Cole moved a reconsideration of the vote just taken, which was agreed to. Mr. Folts moved that the resolution be laid upon the table, which was disagreed to. And a division having been called for, there were 23 in the affirmative and 30 in the negative.

The morning hour having expired, Mr. A. G. Cole by leave introduced the following resolution: "*Resolved*, That H. Tuttle be and he is hereby allowed the sum of \$2.50 per day for his services during the session of this convention since the twentieth of December as assistant fireman." And the fifth rule having first been suspended for that purpose, said resolution was adopted. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 59, negative 2; for the vote see Appendix I, roll call 177].

No. 7, article on the judiciary, was then taken up and read the third time. And the question having been put upon the passage of the article, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 46, negative 17; for the vote see Appendix I, roll call 178].

The convention then resolved itself into committee of the whole for the consideration of No. 16, article on exemption, Mr. A. G. Cole in the chair.

Mr. Larrabee offered a resolution to precede the article, providing for a separate submission of it to the people. He said that he trusted that the convention would be willing to bear him witness that he had not infringed upon their patience by making long speeches. It was not his intention now to break through his habit in this respect. Even if he were anxious to make a long speech, se-

vere indisposition would prevent him from doing so. But he could not let the occasion pass without recording his sentiments as cordially in favor of the proposed measure. He was aware that there was a wide difference of opinion upon this subject and while entertaining the highest respect for the principles set forth in the article, he would be the last one to cast any imputation on those gentlemen who had favored the provision in the bill of rights and who thought they had attained the desired end by that provision. He differed from those gentlemen altogether in opinion.

What is it that the people ask? Is it a new principle? Is it to be sneered at as *progressive*? Is that all the argument against it? Yes; that is all. It is a progressive measure and does not tally with the old standstill notions of the past.

But this is not in fact a new measure. The people ask only that the same privileges may be extended to them that have hitherto been monopolized by the monarchists and aristocrats of the mother country and of Europe and by the bankers and monopolists of every clime. Let us refer to the history of those countries and we shall find them the most stupendous system of exemption that can be imagined—a system sanctioned by parliament, based on hereditary rights, and developing itself in the system of entail. The property of the rich and the noble and the powerful was tied up so that the law could not reach it.

I appeal (continued Mr. Larrabee) to the representatives whom I see around me here from oppressed and downtrodden Ireland, and ask them whether in that unhappy country the principle of exemption has not been monopolized by the highborn, the titled, and the noble. What has been the effect of this monopoly? The people have been oppressed, broken down, and ruined. The people now ask to come in and partake of this principle. They ask of us to give them a portion of ground on God's footstool which they can claim as their own, and not be liable to lose it through the insidious snares of monopolists or by the executions of bankers and usurers. They ask that their homestead may be secured to them and their families. This idea of exemption for the people is startling in the ears of the standstill party. This encroachment frightens them. But the principle of progression is abroad and working in the minds of the people, as in times of old when the same principles wrested from the hands of John of England the Magna Charta. The people are coming up and claiming their rights.

I well remember (continued Mr. Larrabee) when in the city of New York a poor, humble Quaker first dared to enunciate certain great truths to the people. That man was William Leggett. How were those principles received? His arguments went abroad through the land and were sneered at as visionary and progressive. But at last they were triumphant. Look across yon crowded thoroughfare where the walls of old Tammany Hall are reared as the resting place of Democracy. An excited crowd is rushing up to claim the rights to which they were by nature entitled. They find the hall already occupied by the monopolists who have come in at the back doors. One of them already occupies the chair, but he is obliged to yield it to the enthusiastic friends of equal rights. The monopolists and exclusives have a plan reserved to provide for this contingency. The lights are extinguished and a sudden darkness covers the hall. That was the moment of triumph for those lovers of darkness; but the triumph was of brief duration. In an instant a thousand lights flash in all parts of the spacious saloon, borne aloft by living, breathing chandeliers, and the meeting goes on under the control of the Locofocos. The principles there advocated by these true-hearted men are the very principles now advocated by leading Whigs in this hall from the counties of Rock and Grant. You, gentlemen (turning to Messrs. Rountree and Whiton), you are Locofocos, and this principle now before the convention is one which you are bound to support.

What argument is urged against the principle of exemption? I have heard of none. All admit it to be right and just in itself. Why, then, should we satisfy ourselves with a mere recognition of the principle? Why not let the thing itself go abroad throughout the land, and let each poor man throughout the Union say, "There is one state to which I can go where I shall escape oppression—where my inherent rights will not be trampled upon—where my family will ever have a home, let disease or accident or what will come." Incorporate this principle into the constitution and it will be the most glorious Magna Charta that ever was exhibited to the world. The constitution is a good and noble one without it; but with it the world will not know its equal.

Mr. Larrabee said that he wished to impress upon the convention that this was not so new a principle as gentlemen would have us believe, though the demand for its establishment came from another quarter. But if it were, that would be no argument

against it. When it was proposed to reduce the term of the judiciary, it was brought up as an argument against the measure that long terms were established by usage and should not be changed. There was no force in such arguments. We see progression all around us—in inanimate nature, in the mineral state, in vegetable life, from the humblest herb to the tallest tree of the forest; in animal existence, from the lowest animated creature to man himself, from the lowest angels to the throne of heaven. The principle was one which must take hold of the heart of every man. The rich and powerful, who walked abroad with the proud consciousness of being beyond the reverses of fortune, alone might disregard it. It was founded on immutable principles of right and must prevail. If, then, this principle was founded in justice and right, let us fully recognize it and lay it before the people, to be incorporated as an inestimable privilege in the constitution of our state.

Mr. Beall made a few remarks in favor of the amendment.

The question was then taken on the amendment, and it was adopted.

Mr. Kilbourn proposed to amend the article by striking out the words "other and further" in the first line of the second section. In support of this amendment Mr. Kilbourn said that he thought the advocates of exemption ought to accept of it. It left the matter discretionary with the legislature, and if it was adopted he would move to amend further by striking out the first section of the article, which was entirely legislative in its character. After specifying a certain amount of property to be exempted, the article went on to make provision for the legislature to adopt such other and further exemption as they should see fit. If his amendment were adopted, the article would then be a proper constitutional provision and would not be encumbered with surplusage. The article as it stood was like this: There shall be a certain amount exempted, and the legislature may go on to exempt as much more as they see proper. It fixed no limits on the power of the legislature in this particular. The principle of exemption was correct. The only question was the limit. Where should it be, and how much? Some fundamental principle should be laid down in the constitution and the details left to the legislature. If a limit were fixed, it might be found to be a wrong one. Public sentiment might demand more or it might possibly demand less. Why not leave it to public sentiment to control the details? This had been the doctrine of the con-

vention all through. He could see no necessity of submitting this article separately to the people. There was no fear but that a majority of the people would control the matter. If the principle were adopted in the constitution that there should be no exemption, the people would not adopt it. The gentleman from Dodge (Mr. Larrabee) was right in his position that progression was the order of the day; and therefore they ought not to attempt to legislate to-day for the state of things which might prevail some years hence.

Mr. Beall spoke.

[On the motion of Mr. Kilbourn to strike out in the second section the words "other and further," Mr. Judd said that he was sorry, extremely sorry, that the gentleman from Milwaukee had taken upon himself the part of executioner upon the "poor" man's article. The gentleman had, however, chosen his own ground; he had taken his position; and he had, moreover, declared his intention, if the present motion prevailed, to follow it up by a motion "to strike out the first section in the article." Now, sir, if the gentleman has determined to kill this article—if he thinks it his duty to perform the office of decapitation, and thus to distinguish himself as an "operator"—he must be permitted to tell him that in his judgment he had proposed to perform the operation in a most unskillful and unsurgeonlike manner. He (the gentleman from Milwaukee, Mr. Kilbourn) proposes, first, to mar this second section by altering so as to destroy its force and effect and render it perfectly ridiculous. It did seem to him, said Mr. Judd, that the proposition of the gentleman, and more especially his manner of accomplishing his object, was, as he had already said, very unskillful indeed; it was like a public executioner coming to his unfortunate victim and saying, "It is my duty to perform the last office upon your body by decapitation; it is a terrible and severe operation, surely, but it must be done. I therefore propose to perform it in this manner. I will first amputate one of your legs by way of showing you my skill and proficiency in the art, and then I will proceed at once to the grand operation of decapitation, which is the main object that I have in view." What man in his senses but would shudder at such a proposition! How inhuman and unchristianlike!

No, sir, if this article must be defeated, if sound policy justifies it, and if the gentleman (Mr. Kilbourn) must stand forth conspicuously in the front rank of its opposers, let him come direct

to the charge—either make his motion to strike out the first section of the article, which would be a fair, straightforward, open, and manly opposition—or he might reserve his motion and vote directly against the article itself, which would equally effect his main object, to wit, the defeat of the proposition.

Mr. Judd said that he hoped and really would beg gentlemen to give this article a fair chance and allow a direct vote to be taken upon its merits; and for that purpose he entreated them to negative the motion now pending. He would not now discuss the merits of the main question, but would reserve his remarks upon that point until that question was more directly under consideration. He would close his observations by again requesting the convention to vote down the pending motion and meet the article directly upon its own merits, and then, if it was decreed that destruction was to be its fate, let it have at least the small boon of a genteel decapitation, and not, in this way, first mutilate by cutting off a limb here and lopping a branch there, and then end by the flourish of a grand operation. Give us a direct vote.

The motion of Mr. Kilbourn having been lost, and the question being on agreeing to the article as reported by the committee of the whole, Mr. Judd said that every advancement or progress towards improvement—whether in science, art, law, physic, or in the social relations of man—had in every age, under all circumstances, and in every condition in which man was known to exist met with fierce, determined, and uncompromising opposition. This assertion was supported by all history and was confirmed by everyday experience. The opposition to this article, which he had before denominated the “poor” man’s article, was not unlooked for or unexpected by him. On the contrary, he was aware from the day when this subject was first introduced into this convention that it was destined to meet in every stage of its progress determined, unyielding and, he would say, uncompromising hostility; and the gentleman from Walworth (Mr. Estabrook) had at that early day taken occasion to inform the convention that he “should oppose this article in all its phases, from the cellar to the garret”; and true to this declaration the same gentleman had just taken his seat after having delivered a most powerful philippic against it.

In order to prove that all new propositions had met similar opposition he need not go back to ancient history for instances. He would only call to mind a few prominent cases of recent date.

Some years since—he thought about the year 1806—the law defining the widow's dower right was passed by the legislature of New York, which law was vetoed by the council of revision, then consisting of the governor, chancellor, and the judges of the supreme courts; Morgan Lewis then being governor, and Chancellor Kent and other great jurists being also members of council. Yet these men rejected that law mainly because it was an innovation of old established usages! The law went back to the legislature and was passed by a two-thirds vote in each house. And now where is the man to be found who will not subscribe to the wisdom and propriety of that law? Or who would propose to repeal its wise and wholesome provisions? No man will do it, sir. Everybody approves it.

Take the case of the immortal Franklin when he proposed to extract the lightning from the clouds of heaven and to bottle up the fluid! How he was ridiculed and hooted as a wild, chimerical, half-crazy fanatic, whose proposition was not worthy of a serious thought or sober consideration! And yet, he succeeded. And who at this day doubts its practicability?

Sir, said Mr. Judd, when he was but a small lad, he recollected of hearing the people talk (for it was too early for him to read much) about the first law in relation to exemptions, which really exempted to the head of a family in the state of New York one cow, two hogs, two sheep, six chairs, six knives and forks, and necessary clothing, beds, and bedding. Then it was said that "everybody would be ruined; no man could ever collect his debts"; and all the opprobrium which could be gathered from every possible combination of language was thrown upon that law and its friends. But, sir, the law succeeded; and the principle of exemption from that day to this has been steadily on the advance. Indeed, this principle has become so well settled and firmly established that none can be found at this day who will oppose it. No, not one!

Again, look at the onward progress of the "great measure" of the nineteenth century—he meant the laws forever "abolishing imprisonment for debt." How, he would inquire, was the proposition met with when it was first seriously agitated? He well remembered the time (as he presumed many other gentlemen did) some fifteen years ago, when this great measure of advancement in human happiness—and of civilization, he would add—was first perfected in the Empire State by legislative enactment. And need he now

Some years since—he thought about the year 1808—the law defining the widow's dower right was passed by the legislature of New York, which law was vetoed by the council of revision, then consisting of the governor, chancellor, and the judges of the supreme courts; Morgan Lewis then being governor, and Chancellor Kent and other great jurists being also members of council. Yet these men rejected that law mainly because it was an innovation of old established usage! The law went back to the legislature and was passed by a two-thirds vote in each house. And now where is the man to be found who will not subscribe to the wisdom and propriety of that law? Or who would propose to repeal its wise and wholesome provisions? No man will do it, sir. Everybody approves it.

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Sir, said Mr. Judd, when he was but a small lad, he recollected of hearing the people talk (for it was too early for him to read much) about the New York law for the exemption of a family, which really exempted to the head of a family in the state of New York one cow, two hogs, two sheep, six chairs, six knives and forks, and necessary clothing, beds and bedding. Then it was said that "everybody would be ruined; no man could ever collect his debts"; and all the opposition which could be gathered from every possible combination of language was thrown upon that law and its friends. But, sir, the law succeeded; and the principle of exemption from that day to this has been steadily on the advance. Indeed, this principle has become so well settled and firmly established that none can be found at this day who will oppose it. No, not one! Again, look at the onward progress of the "great measure" of the nineteenth century—he meant the law forever "abolishing imprisonment for debt." How, he would inquire, was the proposition met with when it was first seriously agitated? He well remembered the time (as he presumed many other gentlemen did) some fifteen years ago, when this great measure of advancement in human happiness—and of civilization, he would add—was first perfected in the Empire State by legislative enactment. And need he now

tell gentlemen of the violent, unceasing, and uncompromising opposition which it encountered? Surely not! It might not, however, be improper for him to assert—which he did without any fear of successful contradiction—that no public measure which had been agitated during the last forty years had created so great a sensation among the people! He would not then repeat the expression which he then heard from the opposers of the law; it was sufficient to say that it did at the time pervade the whole community. He participated in those feelings himself; but upon examination he found that the opposition had no ground upon which they could stand consistent with the eternal principles of liberty promulgated and advocated by Thomas Jefferson. The nonimprisonment law was adopted, became popular, and has ever since proved satisfactory—so much so that similar laws have been passed by almost and he believed every one of the states in the Union. Now, sir, where is the man—he would repeat it, where is the first man to be found in the whole country who will—nay, who dares—openly oppose the provisions of this humane and philanthropic law? No instance can be found!

The old acts of corporations creating monopolies of every kind have been of late almost entirely discountenanced and repudiated for like reasons, because from their nature they are inconsistent with the principles of justice, equity, and the common rights of individuals. He might call to mind many and innumerable instances of a like character to fortify his position; but it was unnecessary. He would advert to one prominent case while on this branch of the subject. He alluded to the time when the genius of Fulton first proposed to apply the power of steam to navigation. How was he treated? The history of the times affords abundant testimony of the contumely, ridicule, and “all manner of reproach” which his proposition received from the public; and yet it succeeded and is now the wonder and admiration of the whole world.

Being aware, said Mr. Judd, of all these facts in relation to all new propositions of general interest which had been made in other times and as applicable to other subjects, he was not disappointed at the opposition which the present article had encountered here; he had expected it and therefore was not surprised. While he said this he must take the occasion to say that he was surprised to witness such a determined and obstinate re-

sistance to the passage of the article in its present shape. All the arguments of gentlemen against this article were against its merits—in opposition to its principles—as if the propriety of some exemption was not now universally admitted and recognized by every state in the Union, if not in every country in Christendom. It did seem to him that any discussion upon the main principle of this article was totally unnecessary and useless in the present position of the question. He would therefore pass over that part of the subject and confine his remarks more closely to the immediate question at issue.

Mr. President, what is the question under consideration? If he understood it, it was proposed by the article before us “to submit to the people, at the same time when the constitution shall be submitted to them, a separate article, to be voted upon separately, containing a provision exempting from forced sale the homestead of any family and other property from forced sale on execution, such property in the aggregate not to exceed five hundred dollars.” Now, sir, what are the objections to this? The gentleman from Walworth (Mr. Estabrook) says “it has no affinity to a constitution”; is “purely legislative in its provisions”; and complains of the “wonderful pertinacity of its friends.” Is this true, sir? Has this provision “no affinity to a constitution”? Why did the gentleman vote for an article the other day, declaring that the judges of the supreme court should receive each a salary of fifteen hundred dollars a year? Was not that article “purely legislative” in its character? Again, why had he labored not many days ago, for several days in succession, in this convention, to frame a “bank article” and finally had abandoned the effort because the convention could not agree in its details? And why had the same gentleman reported as chairman of a committee a long article on “education and schools,” which had been mainly adopted upon his recommendation? Were not all these articles more minute and detailed in their provisions than the one now before the convention? And if so, how does it happen just now—near the close of this convention—that the gentleman has all at once discovered, upon the moment, as if it were “made to order,” that this article, this humane provision calculated and intended to protect every man from sudden calamity, from destitution, from want and misery, to which everyone is exposed, “has no affinity to a constitution”?

Surely the gentleman's discrimination was nice—even fastidious, he would say.

In his opinion, Mr. Judd said, this article was formed and fitted, peculiarly so, for a constitutional provision; it was not only an affirmation of a great principle, but was also a clear, plain, distinct declaration or reservation of personal rights and securities near and dear to all. He did believe the people expected such a provision would be inserted in the body of the constitution itself; they had petitioned for it by hundreds and by thousands. But the gentleman has said it would "defeat the constitution most certainly, if put into it"; and other gentlemen had said the same thing. To remove this objection the proposition had been changed so as to make the exemption a separate article, and in that form to submit the question as a naked proposition directly to the people for a vote, disconnected from any other question. This course on the part of the friends of the homestead exemption was fair and magnanimous; and he was surprised to witness the pertinacity of those who were opposed to the principle of this article in opposing a separate submission. They say that "a large majority of the people will oppose it." Well, sir, if this be so—if such be the fact—then where is the danger of taking a verdict from the people? We and the friends of the article say that in our opinion a majority of the people are in favor of this measure. They deny this; here, then, we are at an issue. How can this issue be decided? Is it not fair, equitable, and every way just to submit it to the people for their decision? Indeed, is there any other manner by which it can be decided? It did seem to him, if ever a just and reasonable offer was made, this was one. If the people said no, he for one would be satisfied; the gentleman from Fond du Lac (Mr. Beall) had said he would be satisfied; everybody would be satisfied. We say amen to this decision. And who would say no when the people say yes? Certainly, sir, he would not. He always had great respect for the people; and indeed, he could hardly imagine a case where he would not rest satisfied with their opinion! Most assuredly so in a case like the one under consideration.

The convention have declared in the first article adopted by them (the bill of rights) that "all men are born free and independent"; and this was the basis of the great principle of democracy, the essential difference between our government and a monarchy. The first deduction to be drawn from this principle was this: that

every man, being "free and independent" by nature, was himself a component part of the government under which he lived. Hence all our institutions should be based and founded upon public opinion, wherever and whenever that opinion could be ascertained. Whence, then, could have arisen the opposition to the article? And especially, how came that opposition from gentlemen professing the Democratic creed? The gentleman from Milwaukee (Mr. Kilbourn) stood foremost in this opposition; and the gentleman from Walworth (Mr. Estabrook) himself claimed the second rank. The last gentleman had declared in his place here that "if the gentleman from Milwaukee (Mr. Kilbourn) was in the front rank, he desired himself to have the second place in opposition to this measure." And he had exhausted his imagination as well as the English language to find terms of opprobrium sufficiently strong in which to express himself; and he (Mr. Judd) would confess that in this report the gentleman had been extremely successful. He had spoken of it with "loathing and disgust" and had finally capped his climax by denominating it "a plague spot."

Mr. President, said Mr. Judd, whence all this denunciation? Why characterize this measure in this manner? Was the simple proposition to submit the question to the people to be voted upon separately disconnected from the body of the constitution so "dreadful" to the gentleman's sensibilities? It did seem to him that the charge of "pertinacity" as applied to the friends of this article came with a very ill grace from that gentleman. Why not treat the matter coolly, dispassionately, and without excitement? But, sir, the truth is the gentleman is himself laboring under a great—and he would add unaccountable—prejudice upon this subject—so much so that he feared the gentleman had not examined this question with his usual coolness. He must be permitted in reply to these denunciations to tell that gentleman that when he called this proposition "a plague spot" he had better reflected that it was comparing this humane measure, petitioned for by a vast number of persons, with one of the foulest, most disgusting, petechial discolorations of the human skin ever described by man. Let the gentleman have the benefit of his position. He (Mr. Judd) would tell him that there was a spirit abroad among the people upon this subject which could not be crushed or put down in this way, and he would add—let the gentleman beware lest this "plague spot" should hereafter rise up in judgment against him! He repeated

the assertion—let him beware! When a large portion of the people demand a reform, they will effect it sooner or later.

Again, said Mr. Judd, upon what foundation do the opponents to this article stand? Are they not placing themselves in direct opposition to the people? It did seem to him so and he could not for his life perceive any escape from this conclusion. The gentlemen (Messrs. Kilbourn and Estabrook) had shown upon this occasion, he would admit, great courage and firmness—qualities which he always admired. And while on this subject he would say that he had for a long time thought, for himself, that he possessed a reasonable share of courage and he still hoped, upon all occasions where his honor or his interests were infringed, he should be willing to manifest a suitable degree of this attribute to maintain his rights properly. But there was one crisis to which he was not adequate. When he heard the distant murmurings of the people, like the deep and rumbling intonations of thunder; and when he saw the gathering mists of blackness in the far-off horizon, he confessed that his heart quailed within him and his courage failed. He could not meet such a shock. And he would not expose himself to its fury.

Mr. President, let this question go to the people; let them speak their own judgment, and all will be well. If they pronounce in its favor, let it become the law of the land; if they are against it, let that end the agitation of the matter for the present. A great measure of reform cannot be prostrated by unreasonable nor by prejudicial opposition. If this proposition should be adopted and become a part of the constitution, we shall then have taken a high and proud stand in the nation; we shall be able to point to the page and the letter in the fundamental instrument upon which our government is founded, which secures the “greatest good to the greatest number.” We shall have secured to every man who may be able to procure a foot of our soil a place where he can plant his vine and fig tree and where there is none to make him afraid. *Rock River Pilot*, Feb. 16, 1848.]

The committee then rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

On motion of Mr. Richardson the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The convention resolved itself into committee of the whole for the further consideration of No. 16, article on exemption, Mr. A. G. Cole in the chair.

Mr. Kilbourn renewed his amendment (striking out the words "further and other" in section 2).

Mr. Larrabee said he hoped the committee understood the object of the mover of this amendment. He had declared his intention to follow it up, if it prevailed, by striking out the first section. The adoption of the amendment would be a deathblow to the whole article.

Mr. Vanderpoel: As a member of this constitutional convention I should have felt willing to cast a silent vote, were it not that I deem the question of such importance that I, as a friend of the measure, should not feel satisfied were I thus to be a silent spectator of what I conceive to be one of the most humane and just articles that we have in the course of our labor had under consideration. It has been well said by gentlemen upon this floor that this is an age of advancement and progression. The forms of government which have for a long series of years been naught but those of oppression upon poverty, made so by the operation of those laws, are tottering to ruin; and our duty to our country, to the embryo state of Wisconsin, and to the welfare of our citizens and their future prosperity should cause that searching spirit of investigation as to the best measures of securing to the great mass of our population the most certain means of avoiding the condition of abject poverty in which we now behold the degraded millions of Europe.

Mr. President, I am aware that I may here be met by those opposed to exemption laws with this argument: that we are a different nation and a different people; that we have implanted deep in the hearts of our citizens a fund of general knowledge, which will in all future time guard and protect the innovation and influence of concentrated wealth, with all its power and influence, from crushing under its golden Moloch the toil and sweat of industry. I shall also be told that there is no danger of an innovation of this kind, from the fact that since the veil of darkness was lifted by enlightened and liberal legislation from the cruelty practiced upon the unfortunate but not criminal poor, by dealing out to them what was then considered a boon of doubtful policy, which at that time

was looked upon by many of our citizens as an innovation upon the established customs and usages of society with jealousy, to wit: the abolition of imprisonment for debt, our course has been upward and onward; that all legislation in the different states of this Union since that period has advanced in the progress of liberality and humanity; that therefore we need not meddle with the subject, or if we do, but barely recognize the principle in our fundamental law—that the efforts of many states of the Union at the present time to modify and change the existing laws should be permitted to pass by unheeded by us till the experiment is well tested in those states, and then we can profit by their example.

I am opposed to taking this view of the subject. I am opposed to the principle of waiting to do what almost all of our citizens acknowledge to be just and right, till others have set the example. This principle is in direct opposition to the common and almost universal course which has been pursued by this body since the commencement of this session. In many things embraced in the constitution which we are about to sign and send forth to our constituents for their consideration to examine and by their votes either approve or reject, we have made innovations upon established customs and usages. We have stripped the principal executive officer of our government of almost all his appointing power. We have made an elective judiciary. We have gone far beyond many of the states on the subject of the elective franchise. We have established a system of banks and banking which leaves all the power as to their creation and existence in the hands of the people, where it of right belongs, who are in fact the government. Shall we, after having done all this, when we approach this subject, when we approach the threshold of the great sanctum sanctorum of the rights of those who are liable to the rod of oppression from the power of wealth and who are in the accents of supplication depending upon their servants who represent them on this floor to establish those wholesome provisions which will secure not only to those upon whom fortune has already cast her frowns, but upon all our citizens, who are at all times liable to be reduced from wealth to poverty, from affluence to want, a certain security against the tempest and the storm of change and speculation, against the overreaching grasp of unfeeling wealth, a safe retreat secured by our fundamental law—I say, shall we then hesitate to fix firm as the pillars of our government, as enduring as may be the constitution we are

now framing, this hallowed, this God-like provision, if adopted by the people? I may be told that efforts lately made by some of the states of the Union to exempt the homestead from forced sale on execution having failed, we should be cautious—we may step too far—under the considerations we had better wait till some convenient season and then ask of some future legislative body what we dare not now grant the people. My course and my vote upon this subject, Mr. President, may differ from those of my colleagues. It may be different from a majority of the votes cast upon this subject by the members of this house; but if I had certain knowledge of that fact, if I could with the eye of intuition look to the record of the final vote, it would not change my action on this subject. I shall at all times act upon what I honestly believe to be correct in principle and upon those measures which I am satisfied will prove of utility in practice.

Of this much I am fully convinced—that the principle of a liberal exemption is now taking deep root in the public mind, and that if one of a liberal character, equal in its operation upon all classes of society, were engrafted in our constitution, it would not in the least endanger its adoption but on the other hand would augment the vote in its favor. It may be asked why this anxiety. Why do the friends of exemptions urge this matter? There is at present no danger of the inroads of wealth or oppression upon the poor or those in more comfortable circumstances. Land is plenty, and the price low—millions of acres not yet settled upon. There will be ample time to establish the law for years to come.

Mr. President, from such conclusions I beg leave to dissent. When I cast my mind in retrospect and look upon the condition of millions now laboring to sustain a miserable and wretched existence, which by almost every mail that reaches us brings the sad wailing from the green isle of the ocean that their attempts are in many instances fruitless; when I contemplate the starving mother, the orphanized children, or the broken-hearted father, all tottering on the verge of the grave, with no hope or expectation of relief from the millionaires of England, made so by the sweat and toil of those now suffering under their oppression; when I contemplate the difficulty now existing in the old states of this Union to establish the principle of homestead exemption surrounded by the strong, unrelaxing influence of wealth—and when I look upon our own favored territory, with the present equality among our citizens, I look upon

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this as the proper period to establish firmly upon fixed principles the doctrine of exemptions. Mr. President, the vast West is soon to be filled up by the overwhelming tide of immigration. The oppressed of other climes are constantly migrating, dotting our openings and prairies with the rude cabin of the pioneer; and if at the present time the oppressed of foreign climes, the poor from the old thirteen states of this Union, can find a home among us, yet that period will soon arrive when the tide of immigration will roll back upon us. Then wealth will, as it has in other lands, concentrate in the hands of the few; and unless laws of a liberal character, securing to the debtor and his family the means of a sustenance, be passed, we shall then see that our country will be a land in which crime will be abundant, resulting from poverty oppressed. The progress is onward. The grand reform in view by the friends of liberal exemption laws is certain to be accomplished; and when I contemplate that but as yesterday in the grand Empire State, the home of my youth, laws existed forcing the honest but poor debtor from his family to share the cell of a felon for the crime only of being poor; when I look back to many of the inmates of the county poorhouses in that state and find widows and orphanized children become their occupants, made so in many instances by those laws of oppression; when I look upon the present efforts made by many of the states to effect this grand reform, I could wish that the state of Wisconsin might enter the sisterhood of our government with the grand and imposing spectacle inscribed upon her fundamental laws—that the poor, the honest, the unfortunate debtor has a home.

Mr. President, I might here stop, having briefly given my views and the reasons that will govern my vote; and in conclusion I will say to those who are opposed to the principle of a liberal, equal exemption, that in my opinion a few short years and they will by the voice of the people be roused from their lethargy; and if they adhere to their opposition they will be looked upon in the same light that we now contemplate the character of those who before us adhered strenuously to the law of imprisonment for debt. If, sir, we would make our citizens honest and respectable; if we would put one of the most salutary checks upon pauperism and crime; if we, in a word, wish the great mass of our present and future generations to be elevated to a position beyond oppression and want, make a liberal exemption law. I, sir, look at the lone star of Texas,

and I could almost wish that I were enrolled under her sublime, her grand laws upon the subject of exemption, as one of her citizens.

And, sir, in conclusion, I hope that the members of this convention will look upon this subject without that feeling of prejudice arising from the defeat of the old constitution. I, sir, should have been happy to have seen this provision engrafted in the body of our constitution, but the friends of exemption do not ask it—they do not expect it. All we ask is that it should be submitted to the people as a separate article; and if a majority of the electors of this territory should vote against it, then we bow in submission to their mandate till a more auspicious day shall dawn upon Wisconsin. And, sir, if this article of separate submission should be adopted, who, I ask, is not ready to submit and bow to the public will? I, sir, shall record my vote in its favor and I shall look back to that vote in future years with a high degree of satisfaction, believing that vote to sustain principles of humanity, of justice and right—that principle which is calculated to prevent the grasping influence of wealth from swallowing up in its vortex the home of the poor. Adopt it, make a separate submission, and I, sir, feel as though rising generations yet unborn will enter the capitol of this state, and in opening the record of this convention left for a history of our doings in this body, they will venerate the names that are subscribed in its favor, and will view them as benefactors of our race.

Mr. Chase said he would not waste the time of the convention by any lengthy remarks, but he must bear witness against this amendment. If adopted, the first section of the article would be rendered null, and this would destroy the force of the whole article. The vote on this amendment, therefore, was a test vote on the article. The article now provided that a homestead not exceeding five hundred dollars in value should be exempt from forced sale. But the amendment would leave it wholly to the legislature to make any exemption or not. Now, no gentleman present, if in the legislature, would vote against an exemption of five hundred dollars to every family, so that in respect to the amount it probably made no difference whether the sum was specified in the constitution or not. But it was proper to put it there, in the fundamental law of the land, as a declaration that every family should be secure in the possession of an adequate sum of either real or personal estate for its subsistence. It

was proper, moreover, because real estate had never before been exempted, and it was necessary to provide for such an exemption in this solemn manner or it probably would not be made. Mr. Chase said he would vote for the article at any rate. If that was lost, then he would offer another proposition which he did not like as well, but which would be the next best. He had voted against the provision in the bill of rights and would do so again. It meant nothing. It "recognizes the right to an exemption" but does not impose any obligation on the legislature to carry it out. He wanted something done which would be effectual. Gentlemen all said they acknowledged the correctness of the principle of exemption. Did their acts conform? All the advocates of exemption now asked was that they should provide for an exemption of five hundred dollars and then submit it to a vote of the people to say whether it should be incorporated in the constitution or not. How could they claim to be in favor of the principle and vote against so slight and guarded a plan of exemption as this?

Mr. Estabrook said he was one of the committee to whom this subject had been referred. He was one of the two who had dissented from the majority report. It seemed proper, therefore, that he should give his reasons for opposing it. He had listened with great interest to the champions of homestead exemption and he believed they had brought forward on this floor all the reasons which could be urged in favor of it. But those reasons had utterly failed to satisfy him, either that the measure should be established in the constitution or that it should be submitted separately. This convention was not a legislative body and it travels out of its proper sphere when it undertakes to legislate. Our business was to form a constitution; and by that he understood an instrument which divided and apportioned out the powers of government into their separate departments and gave them their solidity and subordination one to another—which constituted the state, in short. To this naturally and properly pertained a bill of rights, declaring and defining in a broad and general way the rights of the people. Now, he asked, what affinity had that measure of homestead exemption to any of the functions of government? Did it relate to the organization of the judiciary, or executive departments, or legislature? Not at all. The proposed article was designed only to bind the legislature to legislate in a certain way. If it had no affinity, then, to the functions of government, had it any to the proper idea of a bill of

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rights? He thought not. Instead of being a declaration of rights, the very object of it was to step between individuals and deprive them of their rights and their legal remedy when those rights were infringed. It was a declaration abrogating the natural and inalienable rights and duties of man and intended to prohibit the legislature forever from recognizing and enforcing them. Then it had none of the peculiarities of a constitutional provision and certainly deserved no place there.

Mr. Estabrook said he had been surprised at the pertinacity of the friends of this measure and had sought the reason for it. Was there any public exigency at this time which demanded it? Were debtors now so generally oppressed in the territory that it required this extraordinary means to save them from ruin? By no means. In the course of his practice he had never known more than three sales of real estate on execution in his county, and these were with the assent of the owners. He had never known of a forced sale of a homestead in the territory. What, then, was the necessity of this measure? There was none. And if it had not been foisted into the old constitution by some indiscretion, the man who should stand up here and advocate such a monstrous proposition, so uncalled for, would be considered a mad man. That old constitution was the whole cause of the evil. It had familiarized the people with this mad absurdity, from which their natural instinct and cultivated reason alike revolted at first; and some of the consequences had ensued which the poet mentioned as the result of seeing the monster vice too often. Those who from any of the thousand reasons which might have operated on them were induced to support that old constitution were placed in a position where it was necessary for them to defend the exemption article, as that was the principal point of attack. They became accustomed to view it in a favorable light—to palliate its faults—to argue in favor of it—and thus, though it might have seemed a frightful monster at first, yet,

Seen too oft, familiar with its face,
They first endure, then pity, then embrace.

Their pride and their ambition, too, were committed in favor of it, and the ridicule and contempt they met on every side made them finally almost regard themselves as martyrs for the truth. This was the cause of all these efforts now to put another such article in the constitution. These efforts were the relics of that ex-

citing campaign—the headaches and heartaches of that drunkenness striving to “propagate their states.” Did not every gentleman know this? Was it not the friends of the old constitution who were now so zealous in this matter? Was it not known that the petitions, which had been sent in here so thick on this subject, had been got up by the friends of the old constitution here, and sent abroad to their fellow laborers in that campaign for their signatures? These things were too evident. Mr. Estabrook said he had received letters from his constituents in regard to these petitions, stating what efforts were made to procure signatures to them, and asking if it was necessary to send in any remonstrances. He had told them it was not—that there was no danger of any such article being inserted in the constitution. Had not this measure been once passed upon and firmly rejected? It was well known that this was the point on which the whole battle was fought. It was known that the insertion of that article in the old constitution had caused Marshall M. Strong to resign his seat and to lead off in the opposition which was immediately excited against it. Then why was it urged on us again? Would it not be received as an insult by the people, after they had so emphatically expressed their opinions upon it but a short time before, to have it forced on them again?

But, Mr. Estabrook continued, we had been told this was a progressive measure. He had been amused by the remarks of the gentleman from Dodge (Mr. Larrabee) claiming this as a progressive measure and yet saying in the same breath that it was no new thing. But he had been surprised at his argument. He had said that the perfection of exemption had existed in England in the laws of primogeniture, etc., and now was advocating the establishment of the same system here. Truly, if this was progressive, it was progressive backwards, and we should soon be called upon to pass laws to prevent people from selling their land at all, as had been done in the line of progression in which the gentleman was trying to lead us. He was trying to lead us backward, through the history of England, and the goal to which his progression tended would be found in full glory in the times of William the Conqueror.

If this was the gentleman's progression, he (Mr. Estabrook) would not follow him. He would go in the other direction. But the gentleman from Fond du Lac had told us that those who did not follow in this track of progression would be burnt up in the fiery furnace of public indignation, and he had singled out the

gentleman from Milwaukee (Mr. Kilbourn) as the principal offender and told him he would be the first to be consumed in it. If he is to be the first victim (said Mr. Estabrook) then let me be the second. I am not afraid to brave this furnace. I am not to be thus terrified. I stand on my own bottom, determined to adhere to what I consider right, and willing to abide the consequences. I scorn such threats and the motives which induced them.

The gentleman from Jefferson (Mr. Vanderpoel) had said this question should be left to the people, as the bank question had been. If no article were inserted in the constitution at all, would not the question be in the hands of the people fully? Most certainly. But if we should place it in the constitution, or append it as a separate article, and it should be voted down, would not that be an instruction to the next legislature not to provide for any exemption? Certainly it would. And then the friends of exemption would be worse off than if they had done nothing but declare the principle in the bill of rights, as is done now. But in what position would it place the friends of the constitution who were opposed to exemption to submit the article separately? Many, and he for one, would not vote for any constitution which contained an exemption article. How could they tell, in voting for the constitution, whether they were voting for a constitution with an exemption article in it, or not? Why should they be forced into such an alternative? Why, when everything else was fixed, should this be left open? But the great question was whether we should put this article in the constitution or provide a way of putting it in; or, on the other hand, leave it wholly to the legislature. This was the question, and the advocates of exemption evaded it. They said the measure was a good one and therefore it should be established in the constitution. There was no logical consequence in this. Let them prove that it is a matter of constitutional law before they ask us to put it in the constitution. But this they could not do. It was purely legislative. He believed there was no man in the convention who would arrogate the ability to establish a law of this kind in the constitution, which would meet the wants of the people ten years hence better than one framed by a legislature elected by the people at that time. The subject was new. The views of the friends of the principle could not be reconciled among themselves; and no law could be framed which would give satisfaction even now. It was folly under such circumstances to attempt to legislate for all future ages. These

were the reasons which had induced him to oppose the placing of this plague-spot in the constitution or countenancing it in any form, and he hoped they would be weighed by the convention and their weight, if any, allowed in making up their verdict.

Mr. Beall spoke.

Mr. Larrabee in reply to the gentleman from Walworth said that gentleman had construed his remarks unfairly. He had charged him with saying in the same breath that the homestead exemption principle was an offspring of progress and then again that it was no new thing, and thus tried to make out a contradiction. I said (continued Mr. Larrabee) that the idea of exemption was no new one, but the practical measure of exempting the home of the poor man was new and progressive. It was the same kind of progress as that made at the American Revolution—the same as that made in the election of judges—the abolition of imprisonment for debt. It was no new idea, but a new thing in practice and in its present application.

Mr. Jackson said he felt bound in justice to himself and his constituents to say a few words on this subject, though he had at first intended to give only a silent vote. We had been told that this homestead exemption proposition was progressive, and our sympathies had been appealed to, to induce us to go for it. Yes, and our understandings, too; for we had been given to understand, plainly, that opposition to it would be political death to us inevitably. Now he hoped these gentlemen would not hurry us out of the world in this unceremonious manner. He hoped they would wait till we were really dead before they undertook to bury us. For his part, his constituents well knew that he had opposed the old constitution and that one reason was on account of the exemption article. His own town gave a third more votes for the Democratic ticket last spring than the constitution received at the same election. And he received a larger vote in his town at the last election than any other man on the ticket. This proved that opposition to exemption was not death to a man in his county. The gentleman from Fond du Lac had read a letter from a gentleman from Salem, in Racine County, in which he stated that he believed the town of Salem would give fifty majority against the constitution unless it provided for a liberal homestead exemption. That gentleman might have thought so. But (continued Mr. Jackson) I am well acquainted in that town, and I believe the contrary. I believe that town would give a

majority against the constitution if it did contain such a provision. And so would the whole county. The few petitions which have come from there in favor of inserting an exemption article in the constitution it is well known were got up here by a certain zealous class of persons and sent down there cut and dried. It was no spontaneous move of the people of Racine County. It was merely an instance of their good nature in yielding to the importunities of desperate fanatics when they knew it could do no harm.

It had been said we should leave this question open, as we have the bank question. How have we left the bank question? We have tied it up effectually. We have required the vote of two legislatures and of the people at large in two different years, before a bank can be established. Would the advocates of exemption be satisfied with this? No, sir; nor do we ask them to. Leave out this article altogether, and the question of exemption will then be continually in the hands of the people. The bill of rights recognizes the principle and makes it almost obligatory on the legislature to provide for an exemption. This is sufficient—this is leaving it where it should be. I am not (continued Mr. Jackson) an enemy to exemption or to the rights of poor men. On the contrary, I am one of that class, and my interests and sympathies are all with them. I have swung the scythe and followed the plough. I have earned all I own by hard labor. But I would have such an exemption as is compatible with justice—one which will protect the poor man from extremities. I would have the homestead of the poor man exempted, but it is no place for it in the constitution. It should be left for legislation and not be tied up by constitutional provisions.

Mr. Chase said he would correct a false impression which seemed to be abroad in relation to the petitions which had been presented praying for a homestead exemption. He had not sent any such petitions abroad himself for signatures, nor did he believe his colleague (Mr. Beall) had. The petitions from his county were generally written and in different hands. The people there, as was known, were almost all in favor of exemption.

Mr. Vanderpoel said the gentleman from Walworth (Mr. Estabrook) had said that the old constitution was defeated because it contained the exemption article. But he would ask that gentleman what was the objection most talked of. Was it that forty acres were exempted? No. It was the married woman's article and the fact that the exemption was not equal. None spoke against the

principle of exemption itself. We ask now no such article as that in the old constitution. We ask only that an article which exempts but half the amount and is equal in its operation may be submitted to a vote of the people, and if approved by them may be inserted in the constitution. Surely this is reasonable.

Mr. Reed said that allusions had been made to the opinions of the people in the north, from which he came, and he thought the representations were not correct. In his district it was regarded by the Whigs at least as a matter of no particular consequence except as a family quarrel in the Democratic party, in which demagogues of different schools took different means to accomplish their ends. They felt little other interest in it than to hope that the two factions might quarrel over it till, like the Kilkenny cats, they devoured each other. Mr. Reed said that so far as he had heard an expression on this point by people in general at the north, that expression was very limited in favor of a homestead exemption and very generally against it. That was his experience. Other gentlemen seemed to have heard differently. As to petitions, he believed an extraordinary effort had been made to manufacture public opinion in favor of exemption and procure signatures, but with very little success. A meeting had been called in Fond du Lac for this purpose and no stone left unturned, but it had proved a failure. Few attended, and discouragement beset them on every side. It had been said that the people were in favor of an exemption article in the constitution. This he did not think was so. Saying nothing of the Whig press, who were all against it, the most able of the Democratic papers were opposed to it. The Democratic papers at Green Bay, at Watertown, at Milwaukee, and at Southport, at least, were opposed to inserting an exemption article in the constitution. (He here read some extracts from these papers showing this.) Thus it would be seen that the press were against the position of gentlemen here. The opinion was very general that the declaration in the bill of rights was enough—that nothing further was required. He said it was not perhaps proper for him, being a Whig, to interfere in the family quarrels of the Democrats, but he felt inclined to join in the impressive warning of the gentleman from Fond du Lac (Mr. Beall) to the "Old Hunkers" and say, "Beware! beware! for the Young Democracy are after you! The Tadpoles will eat you up unless you place this article in the constitution!" It mattered little to him or his party, however, if they did; but, as

he had said, he would prefer that they should both be used up in the scrape.

Mr. Doran said he could not deny but that there were many in Milwaukee who were anxious for the incorporation of an exemption article in the constitution, but yet there was a vast majority there against it. He had consulted with his own countrymen (the Irish) in his intercourse with them and found they were almost universally opposed to it. Those who were poor said it would ruin their credit. They could not get an article without the cash down or a mortgage upon their houses or, if they had none, the security of some responsible friend. These papers must be made out on every little occasion at great expense and vexation or they could do nothing. Those in better circumstances, merchants and business men, said it would ruin their trade—that it would compel them to be so rigid as to be ruinous upon all business, or else it would place them at the mercy of every scoundrel who might get their goods into his possession. It took away from right the sanction of law, and secured to no man his property if he once let it go out of his own hands. Thus the great body of the people, rich and poor, were opposed to the scheme, and with good reasons, applicable to their different situations. Then certainly we ought not to establish it in the constitution. But the advocates of exemption now say they want only the privilege of submitting the question to a direct vote of the people and that it would be very unjust to deprive them of this privilege. How happens it, then, gentlemen did not entertain the same ideas of justice when the bank question was before us? They were loud and earnest then against according us the privilege they now ask for themselves. They tied up the bank question as they designed to do and acknowledged, so as to make it almost impossible to get a bank charter. With what face can they ask of us what they refused to us in a parallel case but a few days ago? We regard this system of exemptions as proposed as morally wrong and disastrous to the best interests of society, and do not feel called upon to countenance it at all. But if it is to be established, it should not be in the constitution. It was legislative in its character and would require frequent modification. He was willing, however, to fix it as the bank article had been fixed—allow an exemption article to be established after passing through two legislatures—and two votes of the people in different years—and he thought that as the advo-

cates of exemption had advocated that method in one instance, they must be content with it in another.

The committee then rose and by their chairman reported the article back to the convention with an amendment.

The question being upon concurring in the amendment of the committee, which was to insert before the article the following, to wit: "*Resolved*, That the following article shall be submitted when the votes of the electors shall be taken for the adoption or rejection of this constitution, to be voted upon separate and distinct from the body of the constitution. The votes given upon said article shall be deposited in a separate box and shall have on them the words following, to wit: 'Exemption—yes' on those votes in favor of adoption, and 'Exemption—no' on those against the adoption of said article; and if a majority of said votes shall be 'Exemption—yes,' then said article shall form a part of said constitution and be incorporated therein. But if a majority as aforesaid shall be 'Exemption—no,' then said article shall be rejected," and having been put, it was decided in the affirmative. And a division having been called for, there were 33 in the affirmative and 9 in the negative.

Mr. Kilbourn moved to amend section 2 by striking out the words "other and further."

Mr. Judd spoke.

Mr. Richardson wished to ask one question of the advocates of homestead exemption. Do they think legislators hereafter will obey the will of their constituents? If they do, then why not leave the question of exemption to them? They can then get such a law as the people shall require. There is this very serious objection to putting the article in the constitution, that it will create a prejudice against the instrument, and will disgust the people.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 8, negative 58; for the vote see Appendix I, roll call 179].

Mr. Kilbourn moved to amend the article by substituting the following, to wit: "The legislature shall have power to pass laws for the exemption of the homestead of a family and for such other and further exemptions as to them shall seem proper, from forced sale on execution, for any debt or debts growing out of or founded upon contract made after the adoption of this constitution: *Provided*, That such exemption shall not affect in any manner any mechanic's or laborer's lien, or any mortgage lawfully obtained. And *Provided*, further, That any law exempting real estate from such sale shall not take effect until the same shall have been submitted to a vote of the people at some general election and shall have been adopted by a majority of all the votes cast at such election; and when so adopted such law shall remain in force until repealed by an act to be approved by a like vote of the people."

Mr. Kilbourn said that in the course of the debate on this subject several gentlemen had seen proper to refer to his course in very harsh and denunciatory terms and had assumed, notwithstanding his disclaimer, that he was opposed to all exemptions. He had offered this substitute to satisfy them that he was bona fide in favor of exemption. He said he was so in favor of it and desired to submit a proper provision on the subject to the people. The article first presented was legislative in its character, and that was a sufficient objection to it. He wished also to submit the question to the people in such a way as not to embarrass the adoption of the constitution. He wished to have the constitution submitted and decided upon according to its constitutional merits—not as a collection of statutory law. If the convention adopted this amendment, it would be a constitutional recognition of the doctrine of homestead exemption. The article first proposed was inconsistent with itself. It said “a homestead not exceeding in value \$500” should be exempt. What did this mean? If the homestead exceeded that sum in value, then there would be no exemption. Now \$500 was a very small sum for a homestead. A homestead not worth more than that was not worth much. If any homestead was to be exempted, it should be permitted to be large enough in value to accomplish the object. The article was inconsistent, also, in giving the legislature power to increase the amount after limiting it to \$500. Mr. Kilbourn said he was in favor of the principle and in favor of leaving it to the people. His amendment would properly come among the miscellaneous provisions, if adopted; but the committee on revision would attend to that. Gentlemen had inquired why not leave this question to the people, as the bank question was. He was willing to do that. His amendment submitted it to them in almost the same form; and he hoped these gentlemen would not now dodge the issue and oppose it. As to public sentiment, he thought it was opposed to specific exemptions of a fixed amount, but in favor of the general principle. In Milwaukee the people were in favor of just about such a proposition as that he had submitted. This he knew, and he submitted it as an expression of their wishes and, if alone, he would stand up for it. As to the petitions which had been sent in, he thought the expression was not so strong as gentlemen seemed to suppose. They claimed there were 2,000 petitioners, but he had not seen so many, and even that was but a small number from the whole territory. And besides, these petitioners

did not ask for a separate submission. They ask that the article may be inserted in the constitution. His proposition would satisfy their prayer much more nearly in this respect than the article reported by the committee. It permitted the legislature by a constitutional provision to provide for a homestead exemption without limitation as to amount, only requiring that they should submit it to a vote of the people. Would the friends of exemption oppose this? If they did, they would oppose their own principles, which they had acted on but a few days ago, and oppose the prayer of all the petitions which had been sent in on the subject. Let them stand up to their principles then. Let them show, as on the bank question, that they are not afraid to trust the people. He expected to see them do so.

Mr. Vanderpoel offered the following amendment: "Strike out 'have power' and insert 'shall at its first session pass.' Strike out 'a majority of all the votes' and insert 'a majority of the votes cast on that subject.'"

Mr. Prentiss was opposed to both the proposed amendments. It would be seen that they were intended as restrictions upon the legislature. This was proper on such questions as banking and internal improvements, where danger was apprehended, but not on such a question as that of exemption, which was in its nature beneficent and merciful. We should not restrain mercy. That would be reversing the natural and customary order of things, and no one desired it. He was opposed to inserting any exemption law in the constitution, but would go for a separate submission of the question to the people. After all the excitements which had been raised upon it, that was the only way in which it could be effectually put at rest. He repeated—he would go for submitting the exemption question to the people, disconnected from anything else. Then he would go to the polls and vote against it, and so he believed would a large majority of the people.

Mr. Chase said he was sorry the gentleman from Jefferson (Mr. Vanderpoel) had offered an amendment with the intention of perfecting the article, when it was obvious that the friends of it were not to be allowed to perfect it in their own way. And he was surprised to see the gentleman from Milwaukee, after all the skill and tactics he had exhibited in endeavoring to prevent any effectual exemption, now pretend to be a friend of homestead exemption and offer an exemption article professedly with the desire of having it

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incorporated into the constitution. Did he think the members of this convention were to be thus caught with chaff? He hoped the inconsistent, hypocritical substitute offered by him would not be entertained.

Mr. Vanderpoel withdrew his amendment.

Mr. Lakin said if he had had any doubts on this question, the able argument of the gentleman from Walworth (Mr. Estabrook) would have removed them all. Gentlemen must see that this exemption is not the poor man's law. It might more properly be termed the "vagrant act." It says to every vagabond that he may pick his neighbor's pocket and the law shall not reach him. He believed in no system of exemptions which did not operate equally; and it was not possible for us to frame one which would operate equally. The propositions submitted to us would operate to protect scoundrels from justice in ninety-nine cases out of one hundred. He believed in calling things by their right names. Call this, then, the "vagrant act," the "patent stealing act," the "scoundrel's protection act," or some such name, for such it was in effect and in intention. Gentlemen said that all great reforms were opposed at first, as this is. So have all great humbugs been opposed; and the history of the world is full of all such as this. Some have succeeded for a few years and made a great noise and then gone down to oblivion and been forgotten. Few have spread widely or been of long duration. How many are started up and exploded in every generation! Where are the humbugs of our fathers? They are not only dead, but forgotten; and when we read of them in history we can hardly imagine that any such ever existed. So will it be with our humbugs. They will seem monstrous and incredible one hundred years hence; and new ones equally absurd will then be in vogue. All these humbugs come up with the same cry as is now put forth by the advocates of homestead exemption. Their dupes say, "All great discoveries were opposed at first. The learned always discountenance everything which did not originate with them. The foolish have been chosen to confront the wise," etc. But if all great reforms have been opposed at first, it does not follow that all things which have been opposed were great reforms and bound to prevail. It was sheer sophistry.

Again, the advocates of exemption were clamorous for a separate submission at last. What argument could be used for a separate submission of this question which would not with equal pro-

incorporated into the constitution. Did he think the members of this convention were to be thus caught with chaff? He hoped the inconsistent, hypocritical substitute offered by him would not be entertained.

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Again, the advocates of exemption were clamorous for a separate submission at last. What argument could be used for a separate submission of this question which would not with equal pro-

priety be urged for the separate submission of every other article in which difference of opinion had prevailed in the convention? There was none. The gentlemen only wanted it as a hobby to ride on at the next election. Perhaps they were entitled to it. It might be one of the inalienable rights of politicians not to have their hobbies interfered with. He would be reluctant to interfere with it as far as they were concerned, but he thought this submission, after the overwhelming condemnation it had already received, would be an insult to the people. As for himself he was not opposed to an honorable exemption, but it was a matter wholly proper for statute regulation and should be left out of the constitution. Gentlemen had said that it was proper to go for a large homestead exemption and that those who opposed it would be politically killed. This argument had no weight with him. He would do what was right, to the best of his ability, without inquiring about consequences.

Mr. Fitzgerald said he was inclined to vote for the separate submission, but he would vote against the article at the polls. He had voted that the bank question should be submitted in a like manner to the people, and he saw no impropriety in doing the same with this.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 41; for the vote see Appendix I, roll call 180].

Mr. Larkin moved that the convention adjourn, which was disagreed to.

Mr. Larkin moved to amend the article by substituting the following, viz.: "The legislature shall at its first session pass an act submitting to the qualified electors of this state, at the first general election, the question of homestead exemptions; and if a majority of the votes cast on that subject shall be in favor of such exemption, then the legislature at its next session thereafter shall pass the necessary law securing such exemption: *Provided*, That no such law shall take effect till it shall have been submitted to the people and have been approved by a majority of the votes cast on that subject."

Mr. Judd spoke.

Mr. Estabrook hoped the substitute would be adopted. It was common ground. It was almost exactly as the bank question was left. He was in favor of leaving the question to the people, but not along with the constitution. This amendment satisfied him very nearly.

Mr. Lovell said, as the proposition stood, he could not vote for it. He had given the subject of separate submission considerable thought, both here and heretofore, and he was opposed to it. The submission of any question separately was an implied admission that it would endanger the constitution if embodied in it. It was manifestly unjust to present to the people issues upon which they could not vote understandingly. Those who would vote against the constitution with it in could not know that it would not be placed in it, and so of those who wished it placed in that instrument. It would become the absorbing question, and the constitution itself would be lost sight of in the contest. There were great, and to his mind insurmountable, objections to the article itself as proposed to be submitted, which ought to defeat it here and before the people. It contained what the people had not asked for, and what they did not wish. They had called for a homestead exemption alone. The amendment of the gentleman from Milwaukee (Mr. Kilbourn) was very objectionable. It was rather a restriction—and an injudicious one—upon the legislature, than a grant of power. He was in favor of, and would give his vote for, a proposition making it compulsory upon the legislature to pass a law securing a homestead to families and for submitting such law to the people at the next election after for their approval, thus presenting the naked question of homestead exemption to the people, and not incumbering it with false issues. This was what the people wanted, and it avoided all the difficulties of making it a constitutional provision.

Mr. Castleman said he had not intended to say one word on this subject, but the remarks of the friends of the exemption article, charging that those opposed to it admitted it right in principle but were opposed to its admission into the constitution, had driven him to repudiate this assumption. As an abstract principle it was in his opinion wrong. Principle, as applied to this discussion, is the moral obligation of man to man. If one man agreed to pay another a sum of money he was morally bound to do so. But the exemption article, stepping between them, annulled the obligation and left him at liberty to fulfill the agreement or not, as he pleased. The principle was the same whether applied to the amount of ten cents or ten thousand dollars, and in the abstract it was wrong. He admitted that the necessity of the case often rendered it expedient to do what in the abstract was not right in principle. This was one of those cases. He recognized it as an act of expediency and not of

principle; and as the necessity which called for it was constantly changing in its urgency he preferred that it be left to the legislature and the people to change it as circumstances might require. He would therefore support the proposition of the gentleman from Milwaukee (Mr. Larkin) in preference to the article reported by the committee of the whole, because the article of the committee forced on the people the necessity of fighting the principle over again, after having once defeated it. And if gentlemen here would recall the scenes enacted during the canvass on the old constitution, if they would recollect the gatherings of hundreds and thousands who left their business and traveled five, ten, twenty miles to attend those gatherings, they would easily see that the time lost and expenses incurred had already cost the people five times as much as the whole expenses of this convention. They had whipped the article once. Should they now have the fight imposed on them again? He did not think it right. If submitted, they would be compelled to fight it again or let it go by default. The people might in this way be worried into its adoption. He had many other reasons for opposing the report of the committee, but the convention was impatient, and he would not impose on it. He would not have said even this much, but it had just been intimated to him that he stood alone of all the delegates from his county in opposition to the report and he deemed it his duty to define his position.

Mr. Gifford said it was extremely painful for him to differ with his colleague (Mr. Castleman) in regard to the opinions of the people of Waukesha upon this question. He had not taken a very active part in the canvass on the old constitution, but so far as he had mingled in it he did not remember ever to have heard any man say that he was opposed to it on account of the exemption article. He had heard, however, that there were some in the northern part of the county who took this ground. But he knew the people of that county as well as of others were divided on the subject, and he thought that was a sufficient reason for submitting it to them in their sovereign capacity. That and that alone would satisfy them.

Mr. Sanders moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 23, negative 39; for the vote see Appendix I, roll call 181].

Mr. Jackson moved to amend the substitute by striking out the proviso, which was agreed to.

The question was then put upon the adoption of the substitute as amended, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 26, negative 37; for the vote see Appendix I, roll call 182].

Mr. Beall moved that the convention adjourn. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 29, negative 33; for the vote see Appendix I, roll call 183].

The question then being upon ordering the article to be engrossed and read a third time, Mr. Beall moved a call of the convention, which was ordered, and Messrs. Biggs, A. G. Cole, Hollenbeck, and Reed reported as absent. On motion of Mr. Chase the convention adjourned.

Mr. Chase expressed his hopes that the resolution would not pass. He could not see the object of the mover of the resolution. Its tendency could not be to gain friends or favor for the constitution in Congress.

The question being on the adoption of the resolution, Mr. Folts moved a call of the convention, which was ordered, and Messrs. Beall, Bishop, A. G. Cole, Colley, Davenport, Dunn, Estabrook, Featherstonhaugh, Fitzgerald, Fox, Gale, Harrington, Harvey, Jackson, Larkin, Lovell, McChallen, Melford, Prentiss, Turner, and Ward reported as absent.

Mr. Foot moved that Mr. Colley be excused from his attendance, which was agreed to. Mr. Rountree moved that all further proceedings under the call be dispensed with, which was disagreed to. Mr. Richardson moved that the convention take a recess until half past two o'clock p.m., which was disagreed to. Mr. Richardson moved that all further proceedings under the call be dispensed with, which was agreed to.

Mr. Dunn said he would suggest a few reasons why the resolutions should not be adopted. He had not supposed at first that there was any serious intention of passing them and therefore had remained silent; but he perceived by the vote of yesterday that there was some reason to apprehend that they would prevail. The resolutions introduced by Mr. Biggs were grounded on the Ordinance of 1787, which provides that three or five states should be formed out of the Northwest Territory, and that the law providing for the admission of Wisconsin into the Union was unconstitutional in this: that the boundaries proposed for the state were at variance with the ordinance. If these resolutions were adopted, an absurdity would be created in the constitution. We have adopted an article on boundaries, agreeing to the boundary proposed by Congress, and

WEDNESDAY, JANUARY 26, 1848

The reading of the journal of yesterday was dispensed with.

The President presented a communication from the superintendent of territorial property, which was read and on motion of Mr. Judd was referred to the committee on incidental expenses.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 19, article on incorporations, and No. 20, article on amendments.

Mr. Rountree introduced the following resolution, to wit: "*Resolved*, That \$5.00 be paid to Frederick Hollman for two days' services as sergeant at arms pro tem of this convention." And the fifth rule having first been suspended for that purpose, said resolution was adopted.

Resolution No. 3, introduced by Mr. Biggs on the twenty-first, was taken up.

Mr. Chase expressed his hopes that the resolution would not pass. He could not see the object of the mover of the resolution. Its tendency could not be to gain friends or favor for the constitution in Congress.

The question being on the adoption of the resolution, Mr. Folts moved a call of the convention, which was ordered, and Messrs. Beall, Bishop, A. G. Cole, Colley, Davenport, Dunn, Estabrook, Featherstonhaugh, Fitzgerald, Fox, Gale, Harrington, Harvey, Jackson, Larkin, Lovell, McClellan, Mulford, Prentiss, Turner, and Ward reported as absent.

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at the same time submitting another for which we express a preference. If the resolutions are adopted, the article must undergo a radical change or else we incorporate an absurdity. We adopt boundaries and then declare them to be unconstitutional. It will then become necessary to revise the article on boundaries and adapt it to the resolutions. Are we prepared to take that step? If so, it will be proper to adopt the resolutions.

If this matter came up now for the first time, Mr. Dunn said that he might be willing to vote for it; but when it was well known that Congress had had this subject before them time and again and had taken the opinions of the ablest jurists that they had the power of fixing the boundaries of the new states, it would be impolitic in the face of these facts, at this day, to present these resolutions. The only tendency would be to delay and impede our admission into the Union. He need only refer to the political complexion of the House of Representatives of the United States. That body would naturally not be particularly desirous of admitting Wisconsin at this time, but would prefer to delay the admission a year. They would avail themselves of every obstacle which the constitution might offer, and this would be an important one. They would insist that it was unwise and undignified for Congress to recede from the boundaries which they had proposed, and that the constitution should be referred back to the people of Wisconsin to be revised in conformity with the act of Congress.

It was desirable to adopt such a constitution as would be acceptable to the people and to Congress. He thought the article on boundaries, as adopted by the convention, was the very thing. It received the boundary proposed by Congress, but merely declared a preference for another one, leaving it to Congress to agree or disagree to this preference. There could be no embarrassment if it was left as it stood, while great embarrassment might ensue from the adoption of the resolutions. As a matter of history, he would revert to the fact that every state except Michigan has described in its constitution the boundaries given it by Congress. Michigan disagreed to the boundaries proposed and attempted to come into the Union leaving this an open question. The example of Michigan ought to be a warning to other states.

He would give an opinion in reference to this matter. It was objected by many members that they should not commit themselves by adopting the boundaries prescribed by the act of 1846, for by

at the same time submitting another for which we express a preference. If the resolutions are adopted, the article must undergo a radical change or else we incorporate an amendment. We adopt boundaries and then declare them to be unconstitutional. It will then become necessary to revise the article on boundaries and adapt it to the resolutions. Are we prepared to take that step? If so, it will be proper to adopt the resolutions.

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He would give an opinion in reference to this matter. It was objected by many members that they should not commit themselves by adopting the boundaries prescribed by the act of 1846, for by

so doing they would preclude themselves from obtaining other boundaries. Now he apprehended that if ever this question should be brought before the Supreme Court of the United States, and if the decision of the court should be in favor of the principles set forth in these resolutions, all the legislation of Congress on the subject would be annulled, and the principles of the Ordinance of 1787 would be the law of the land. If so, the act of 1846 would be annulled with the rest, and Wisconsin would be restored to the rights which they claimed for her. Thus acceptance of the boundaries prescribed by Congress would not restrict us in any manner when that question should be decided. Any proposition emanating from the convention, having for its object to submit a question as an agreed case to the Supreme Court of the United States, was useless; for it was asking Congress to reverse all its legislation on that subject for many years past. Why encumber the constitution with propositions asking Congress to be a party to an agreed case before the Supreme Court, when that body would never agree to it? The question might come up in some other form, and then if the Supreme Court should decide in our favor, we would be restored to the rights claimed for us. Viewing the matter in this light, we ought not at this late day to open the question. He repeated that as an original proposition—a proposition of first impression—he did not know that he would disagree with the mover of these resolutions. But it was now too late. There had been too much legislation of Congress on the subject.

Mr. Prentiss moved to amend the resolution by striking out all after the words "guarantee to her."

Mr. Prentiss said he was sorry that the resolutions had been offered, because he apprehended that they would embarrass the admission of the state into the Union. But having been offered, and believing that the people of Wisconsin possessed the rights claimed by them, he would be compelled to vote for them, though he thought it very impolitic and inexpedient to offer them at this time.

Mr. Rountree was opposed to the amendment. He desired that the question should be taken on the resolutions as they stood. He wished an expression of the convention to be had. Let it not be said that they wished to kill the resolutions with amendments. The argument that it was impolitic to pass the resolutions went for nothing. It was true that the article on boundaries had been agreed

to, but under what circumstances? There had been a fraud in the publication of the law of Congress, and the article, having been adopted under a misapprehension, should not be allowed to remain as the law of the land. He apprehended no difficulty in the matter of obtaining admission into the Union; but he esteemed it a duty which they owed to their country to assert their rights, whether they were admitted or refused. No one should be deterred by considerations of temporary advantage from claiming his rights.

These resolutions, if adopted, were a declaration of the opinion of the convention on the act of Congress of 1846. He was free to give his opinion that that act was null and void under the Ordinance of 1787. He held that if the act of 1846 conflicted with the Ordinance of 1787 it was null and void in itself. For one, he was willing to make that declaration. He held that we would not be excluded by the act of 1846 from coming into the Union, even if we disagreed to it. Our admission did not depend on the acceptance or rejection of the boundaries prescribed in that act. The act only declared that if we accepted those boundaries, we should have certain grants and privileges. He, for one, was not prepared to relinquish the rights of Wisconsin to the whole territory; and every gentleman must admit that if the Ordinance of 1787 was good for anything, they possessed such rights. He hoped that gentlemen would not allow their votes to be influenced by any suggestions of expediency. It was the duty of members of this convention to leave the question open, so that it could be decided in the Supreme Court of the United States, and not to jump at an erroneous conclusion, and through fear that the state might not be admitted in time to cast a vote at the next presidential election sacrifice its most important rights.

Mr. Dunn said he knew that the cry of fraud always excited indignation in every honest mind and weakened everything to which it was attached. The gentleman from Grant (Mr. Rountree) had said that a fraud had been perpetrated in the publication of the act of Congress—that is, the act as published by the territorial authorities. Now as a matter of history the original act as presented to Congress contained the language, “*Provided, That the state of Wisconsin assent to or agree to*” the proposed boundaries. So very sensitive were the members of Congress on this subject that the instant their eyes fell upon it they struck it out. The fact was

that the very fraud complained of was a fraud in favor of leaving this an open question.

Mr. Sanders said when the vote was taken on this question yesterday he could not vote for it because he regarded the act of Congress not as void but as voidable. The act might be confirmed by the consent of Virginia and Wisconsin. When the article on boundaries was before the convention it was said that it was a question with which we had nothing to do. We must be contented with the boundaries which Congress might please to prescribe. Now, sir (said Mr. Sanders), I beg leave to dissent from this position. It is well known that during the Michigan contest the opinion of Chief Justice Kent and D. B. Ogden was given on the subject of boundaries. They agreed in the opinion that whenever Congress should form more than three states in the Northwest Territory, then the northern boundary of the three first states should be "an east and west line down through the southerly bend or extreme of Lake Michigan." (Mr. Sanders here read the opinion of Judges Kent and Ogden.)

Mr. Kilbourn inquired whether this was the opinion of Mr. Kent as chief justice, or "lawyer" Kent.

Mr. Sanders replied that the opinion was given by Mr. Kent after he had retired from the bench. He did not conceive, however, that that fact detracted anything from the force of his opinion. Would it be contended that Congress would have the right to force the institution of slavery upon the Northwest Territory, in violation of the Ordinance of 1787? Could Congress suspend the writ of habeas corpus or prohibit "the free navigation of the waters leading into the Mississippi and Lake Michigan"? Should an act be passed altering or abridging any personal right which was secured to us by the ordinance, we would disregard and break through such a law as if it were a cobweb barrier. The ordinance was the Magna Charta of our rights. It was above the constitution and beyond the reach of Congress. Yet, if it could be violated in one respect, it could in another, therefore he contended that the act prescribing the boundaries of the fifth state was unconstitutional, because it did not follow the ordinance. When the Michigan case was in Congress, this whole matter was discussed. In the debate in the Senate, Mr. Buchanan in speaking of the boundaries of the fifth state said: "It is true that Congress have never yet determined the boundaries of the state of Michigan; but their omission to do so

could not affect in any degree the right of the free male inhabitants to vote for delegates to the convention which formed their constitution. As soon as Michigan shall be admitted into the Union the boundaries of Wisconsin will then be irrevocably determined. It will then be the last of the five states into which the Northwestern Territory can be divided under the terms of the ordinance. When that territory shall contain sixty thousand free inhabitants, they will have an absolute right to demand admission as a state into the Union, and we cannot refuse to admit them without violating the public faith."

Mr. Sanders said that he rose only for the purpose of reading to the convention the opinions which he had just read, which to his mind were a conclusive argument fully answering the position taken by the gentleman from Lafayette.

Mr. Richardson said that there appeared to be no difference of opinion in the convention as to the right of Wisconsin to the whole territory. The only question was, inasmuch as they had passed an article on boundaries, whether they should retrace their steps or decline doing so because they were so near the close of the session. He, for one, was willing to go back and undo what they had done wrong; and even if they were kept out of the Union by so doing for two or three years, not to give up the rights to which they were entitled.

Mr. Prentiss explained his proposed amendment. The part which he wished to strike out declared the law to be void and was unnecessarily severe and harsh.

Mr. Reed regarded the resolutions as involving a question of great importance. It seemed to him, however, that some of the gentlemen who had spoken mistook the proposition before the house. He did not understand the resolutions as being intended to form a part of the constitution, but merely an expression of opinion on the part of the convention as to the rights of the state. The article on boundaries had passed the convention under a misunderstanding. The whole argument in favor of accepting the boundaries proposed by Congress had been based on that one clause which had been supposed to be in the law, but which really was not in it. The resolutions simply stated what were supposed to be the rights of the state. He thought they ought to go back and undo what they had done under a misconception. If they accepted the boundaries prescribed by Congress, they surrendered a very large portion of the

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original territory without any hope of reparation. Michigan asserted her right to the territory claimed and occupied by Ohio. It was true she did not get it, but she received in lieu of it twenty thousand square miles of territory properly belonging to Wisconsin. It was eminently proper for the convention to claim the territory in question, and he would not only go for the proposition of the gentleman from Green (Mr. Biggs) but would also be in favor of striking out the entire article on boundaries and leaving the question open. He did not believe this course would prejudice the admission of Wisconsin into the Union; but if it should, they were bound to assert the rights of the people and not to sign them away without any equivalent or the hope of one. He would vote for the resolutions, and hoped that if they were adopted the vote by which the article on boundaries was adopted would be reconsidered.

Mr. Chase had not supposed that this subject was going to take so wide a range after it had already been disposed of. Like the ghost of Banquo, it was continually coming up and pushing members from their stools and would continue to do so until it was finally laid. Every man of sense could read the Ordinance of 1787 for himself, and his opinion was just as good as Chief Justice Kent's. Gentlemen must appeal to experience in this matter. Had any state gone into the Union without boundaries? No, nor ever would. The only argument that had been advanced in favor of the passage of the resolutions was that it might be policy for us to remain out of the Union until after the next presidential election. He resided in Michigan at the time of the admission of that state into the Union and well remembered the difficulties in which she involved herself by the course she adopted. She did not obtain her admission until her boundaries were settled. The question, after all, resolved itself into this: "Is it best to remain out of the Union until after the presidential election of 1848?"

Mr. Estabrook would be sorry to be made to believe that the subject was narrowed down to a mere question of expediency. He considered it one of right. He had heard no argument here conflicting with the right of the territory under the Ordinance of 1787. He could well understand what reasons actuated gentlemen occupying a central position in the state, like the member from Fond du Lac, in opposing these resolutions. With them it was a mere question of policy. Michigan took ground for the territory she was entitled to on the south. Did she get it? No. But the re-

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sult was a compromise by which she yielded her rights and took territory in Wisconsin in lieu of them. By that act Congress infringed on the rights of Wisconsin. Now were we, like whipped spaniels, to crouch and yield to these encroachments? Let us assert our rights, and by doing so we shall win the respect of Congress.

The question was here taken on Mr. Prentiss, amendment and it was adopted.

Mr. Kilbourn wished to make a few remarks. Inasmuch as gentlemen seemed to think that Wisconsin had some rights of which she was in danger of being deprived, his own opinion was that under the Ordinance of 1787 they possessed very slender grounds. This ordinance gave a discretionary power to Congress to make one or two states north of an east and west line running through the most southerly bend of Lake Michigan. It left a discretionary power to Congress which it has seen fit to exercise in a certain way. If the boundaries established by Congress are to be regarded as unconstitutional, and the state of Illinois extends north to the British line, and this territory is to be regarded as a part of Illinois, all the rights we possess are by virtue of the distinct action of Congress. Gentlemen beg the question at first and assert that Wisconsin has certain rights and then argue upon the propriety of maintaining them. But let us admit these rights to exist. If the territory to the north is all we are striving for, what is it worth? Is it worth taking as a gift, with the expense of maintaining a government over it? As a citizen of Wisconsin, I would reject it if the fee simple of it were offered me.

Mr. Sanders said the gentleman from Milwaukee (Mr. Kilbourn) had stated it was left optional with Congress to make one or two states north of the southern boundary of Illinois. Whether this were so or not, Congress could not make Wisconsin a part of Illinois, for the country lying north of the line running through the most southerly bend of Lake Michigan had a right to demand admission into the Union when it should have a population of 60,000 free white inhabitants. It had been argued, when the subject of boundaries was under discussion before, that with the consent of Michigan Congress would annex Wisconsin to that state. This he denied, because as soon as four states were erected out of the Northwest Territory the Ordinance of 1787 defined the boundaries of the fifth, and Congress could not alter or abridge the right.

Mr. Lovell said that no one on this floor except the gentleman from Milwaukee (Mr. Kilbourn) had taken the true ground on the question of the right of Wisconsin to the boundaries here claimed. He (Mr. Lovell) was one of those who believed that no right existed, save what Congress gave us. Great names had been cited as authority for our right to a line drawn east and west through the southern bend of Lake Michigan, and they deserve great consideration; but names equally distinguished might be cited on the other side of the question. This subject had been frequently examined, and after long and careful investigation many of the ablest jurists in the United States had arrived at the conclusion that there were no rights in the matter other than as Congress should establish them.

It had been said that if the boundaries prescribed in the Ordinance of 1787 were set aside, all the other provisions under that ordinance would be liable to be disregarded. This was not so. The matter of boundaries alone was left open in the ordinance. The provision of the fifth section declares, "The boundaries of these three states shall be subject so far to be altered that if Congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of said territory which lies north of an east and west line drawn through the southerly bend of Lake Michigan." The words "in that part" seemed to be the key words, and if there was any ambiguity it would be proper to refer to the action of Congress and the cotemporary history of the passage of the ordinance for an explanation of it. What cotemporary history was this? On the seventh of July, 1786, Mr. Grayson of Virginia moved a resolution in Congress requesting Virginia "so to alter its acts of cession as that the states in the Western Territory may be bounded as follows: There shall be three states between the Ohio and a line running due east from the Mississippi to the eastern boundary of the United States, so as to touch the most southern part of Lake Michigan." The resolution then proceeds to fix the boundaries of the three south states and two north states, dividing them by this fixed due east line. Congress refused to pass the resolution and on the same day did pass another resolution in these words: "That it be and it hereby is recommended to the legislature of Virginia to take into consideration their acts of cession and revise the same so as to empower the United States, in Congress assembled, to make such a division of the territory of the United

States lying northerly and westerly of the river Ohio into distinct republican states, not more than five nor less than three, as the situation of that country and future circumstances may require." And in the preamble preceding the resolution it was among other things recited that without such change in the act of cession "some of the new states will be deprived of the advantages of navigation." Before Virginia acted upon this recommendation Congress passed the Ordinance of 1787 as it now stands, and in it in part adopted the line proposed in Mr. Grayson's resolution, and in part rejected the line. And it is believed that it was intended so far to fix the dividing line between the two north and three south states that the south states should not be deprived of the advantage of navigation, and so far to leave it in the discretion of Congress to fix the boundary north of the east and west line in such manner that the states of Indiana and Illinois should have access to Lake Michigan. Congress had acted upon this interpretation of that part of the ordinance. Virginia had acquiesced, and this was "common consent."

As to the northern boundary, he doubted whether the claim of Wisconsin to that was any better founded. He doubted whether any portion of the territory north which had been acquired since 1787 by treaty with Great Britain belonged to Wisconsin. By the treaty of peace in 1783 the boundary between the United States and Great Britain was to run through Lake Superior, thence to the Lake of the Woods; thence due west to the Mississippi; thence down the Mississippi to 31° north latitude. It was obvious by the terms of that treaty very little was known of the country at that time. The maps of that period made the shores of Lake Superior run in a more northerly direction than accurate surveys had since settled them to be. When in 1794 this boundary was found to be impossible, another treaty was entered into by which the boundary was left unsettled as far south as one degree south of the Falls of St. Anthony, considerably south of the line fixed in the act of Congress of 1846. The treaty of 1818 again attempted to settle the boundary, but it was never finally agreed upon and fixed until the treaty of Washington in 1842. All the treaties, however, showed most conclusively that the territory ceded by Virginia could not have extended north of the St. Louis River.

It was not true that Michigan was admitted into the Union with open boundaries. Her Senators were sent to Washington and were kept in the lobby waiting until the boundary question was settled.

What was the fact with respect to Missouri and Iowa? While Iowa was yet a territory the question of her boundaries was indeed submitted to the Supreme Court of the United States. But when she was admitted into the Union Congress passed an act determining her boundaries and declaring that she should not be admitted until she accepted of the boundaries prescribed.

With all these facts before us, ought we not to dismiss this question? Having our boundaries so accurately, so carefully defined by the chairman of the committee on territories, now a member of the United States Senate (Hon. Stephen A. Douglas of Illinois) it would be the height of folly to set up pretended claims to extort something more from Congress. The only effect of it would be to keep us out of the Union. Gentlemen have talked of our submitting like whipped spaniels. We have no right to the boundary claimed; and the epithet might more appropriately be applied to those who by passing these resolutions whine for what they could not reasonably expect. As a question of policy, even if there existed a right, it would be better to yield it. By asserting it, if successful, we should only obtain a portion of country which would be useless to us. Let us look at the small states of New England. How much better governed are they than those with a large and sparsely settled territory! Their laws are more stable and better executed; and the reason is that they are more compact, and more united, and more assimilated. This would of itself be a strong argument against annexing the extensive waste territory to our north.

Mr. Lovell said he should have let this matter pass, if he had not thought the effect of passing the resolutions would be injurious. If it was merely left as a resolution, it was useless; if to form a part of the constitution, most injudicious. Rather take up the matter openly and reconsider the vote by which the article on boundaries was passed, than make a windy declaration which amounted to nothing.

Mr. Estabrook said that evidence enough could be shown to convince any jury so that they would render a verdict in favor of those who claimed the whole territory. He cited the authority of Kent, Ogden, J. Q. Adams, and others, in favor of the right of Wisconsin to the entire territory up to the British line.

The morning hour having expired, Mr. Rountree moved that the rule be suspended for the further consideration of said resolution, [which was agreed to].

The question was then put upon the amendment, and was decided in the affirmative.

Mr. Larrabee moved to amend the resolution by striking out in the first line the words "territory of Wisconsin being" and inserting the words "people of"; also, in the last line by striking out "them" and inserting "her," which was disagreed to. And a division having been called for, there were 21 in the affirmative and 27 in the negative. The question was then put upon the adoption of the resolution, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 38, negative 26; for the vote see Appendix I, roll call 184].

The question was then put upon the adoption of the preamble, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 37, negative 27; for the vote see Appendix I, roll call 185].

Mr. Lovell inquired, "Are these resolutions to be appended to the constitution and submitted to the people?"

The President: The chair has no information on the subject.

No. 20, article on amendments, was then taken up and read the third time, when Mr. Wheeler moved to recommit the article to the committee with instructions to substitute the following for the article, to wit: "Every tenth year after the adoption of this constitution it shall be the duty of the legislature to submit to the people at the next annual election the question whether they are in favor of calling a convention to revise the constitution or not; and if a majority of the qualified electors voting thereon shall have been in favor of a constitution, the legislature shall at its next session provide by law for holding a convention, to be holden within six months thereafter." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 44; for the vote see Appendix I, roll call 186].

The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 52, negative 11; for the vote see Appendix I, roll call 187].

No. 19, article on incorporations, was then taken up and read the third time. And the question having been put upon the passage of the article, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 65, negative 1; for the vote see Appendix I, roll call 188].

Articles No. 19 and 20 were then referred to the committee on revision and arrangement.

Mr. Dunn, from the committee on revision and arrangement, made the following report with amendments, to wit:

"The committee on revision and arrangement respectfully report the articles on the judiciary, boundary, suffrage, and the amendment to the legislative article with corrections and suggestions, in which they ask the concurrence of the convention.

The question was then put upon the amendment, and was decided in the affirmative.

Mr. Lawrence moved to amend the resolution by striking out in the first line the words "territory of Wisconsin being" and inserting the words "people of"; also in the last line by striking out "them" and inserting "her", which was disagreed to. And a division having been called for, there were 21 in the affirmative and 27 in the negative. The question was then put upon the adoption of the resolution, and was decided in the affirmative. And the yeas and nays having been called for and ordered, those who voted in the affirmative were [affirmative 38; negative 28; for the vote see Appendix I, roll call 184]. The question was then put upon the adoption of the preamble, and was decided in the affirmative. And the yeas and nays having been called for and ordered, those who voted in the affirmative were [affirmative 37; negative 27; for the vote see Appendix I, roll call 185].

Mr. Lovell inquired, "Are these resolutions to be appended to the constitution and submitted to the people?"
The President: The chair has no information on the subject.

No. 20, article on amendments, was then taken up and read the third time, when Mr. Wheeler moved to recommend the article to the committee with instructions to substitute the following for the article, to wit: "Every tenth year after the adoption of this constitution it shall be the duty of the legislature to submit to the people at the next annual election the question whether they are in favor of calling a convention to revise the constitution or not, and if a majority of the qualified electors voting thereon shall have been in favor of a convention, the legislature shall at its next session provide by law for holding a convention, to be held within six months thereafter." And the question having been put, it was decided in the negative. And the yeas and nays having been called for and ordered, those who voted in the affirmative were [affirmative 22; negative 44; for the vote see Appendix I, roll call 186]. The question was then put upon the passage of the article, and was decided in the affirmative. And the yeas and nays being required by the rules, those who voted in the affirmative were [affirmative 22; negative 11; for the vote see Appendix I, roll call 187].

No. 19, article on incorporation, was then taken up and read the third time. And the question having been put upon the passage of the article, it was decided in the affirmative. And the yeas and nays being required by the rules, those who voted in the affirmative were [affirmative 22; negative 1; for the vote see Appendix I, roll call 188].

Articles No. 18 and 20 were then referred to the committee on revision and arrangement.
Mr. Dunn, from the committee on revision and arrangement, made the following report, with amendments, to wit: "The committee on revision and arrangement respectfully report the articles on the judiciary, boundary, suffrage, and the amendment to the legislative article, with corrections and suggestions, in which they ask the concurrence of the convention."

JUDICIARY

"Title—Alter so as to read: 'Judiciary.'

"Section 2. Last line, substitute 'judges of the circuit courts' for 'circuit judges' and substitute 'and' for 'or' in preceding line.

"Section 3. In third line strike out 'in said court.' Insert instead of the ninth, tenth, eleventh, and twelfth line to 'time,' as follows: 'Section 4. The separate supreme court when so organized shall not be changed or discontinued by the legislature; the judges thereof shall be so classified that but one of them shall go out of office at the same time, and their term of office shall be the same as [is provided for] the judges of the circuit court.'

"Section 6. Insert 'practicable' for 'may be' and in last line substitute 'judges of the circuit court' for 'circuit judges.'

"Section 7. Strike out in eighth line 'to be ascertained as the legislature may direct.'

"Section 8. Strike out in second line 'otherwise.'

"Section 10. Strike out in first line of third page 'that of' and alter last paragraph so as to read: 'No person shall be eligible to the office of judge who shall not at the time of his election be a citizen of the United States and have attained the age of twenty-five years and be a qualified elector within the jurisdiction for which he may be chosen.'

"Section 11. Transpose 'at least twice in each year' in the fifth line so as to follow 'held' in the fourth line.

"Section 23. Strike out in the fourth line 'suitable to be'; strike out in sixth line 'at such time as may be prescribed' and alter last line so as to read 'and such commission shall terminate upon the rendering of the report, unless otherwise provided by law.'"

SUFFRAGE

"Section 1. In second class substitute 'conformably to' for 'in compliance with.' In the third class insert 'to the contrary' before 'notwithstanding.' In proviso strike out 'to be held subsequent to the passage thereof.'

"Section 2. Alter to read: 'No person under guardianship, non compos mentis, or insane shall be qualified to vote at any election; nor shall any person convicted of treason or felony be qualified to vote at any election unless restored to civil rights.'

"Section 3. Put a period after the word 'chosen' and recommend that the remaining portion of the section be added as a separate section to the legislative article.

"Section 6. In the third line strike out 'for.'"

BOUNDARIES

"Suggest an insertion in section 1 of the boundaries described by the act of Congress, after 'six' in sixth line.

"Section 2. Insert after 'confirmed' in second line 'and shall remain irrevocable without the consent of the United States, to wit: Beginning at the northeast corner of the state of Illinois, that is to say at a point in the center

of Lake Michigan where the line of forty-two degrees and thirty minutes of north latitude crosses the same; thence running with the boundary line of the state of Michigan through Lake Michigan, Green Bay, to the mouth of the Menominee River; thence up the channel of said river to the Brule River; thence up the said last mentioned river to Lake Brule; thence along the southern shore of Lake Brule in a direct line to the center of the channel, between Middle and South Islands in the Lake of the Desert; thence in a direct line to the headwaters of the Montreal River, as marked upon the survey made by Captain Cram; thence down the main channel of the Montreal River to the middle of Lake Superior; thence through the center of Lake Superior to the mouth of the St. Louis River; thence up the main channel of said river to the first rapids in the same above the Indian village, according to Nicolet's map; thence due south to the main branch of the river St. Croix; thence down the main channel of said river to the Mississippi; thence down the center of the main channel of that river to the northwest corner of the state of Illinois; thence due east with the northern boundary of the state of Illinois to the place of beginning, as established by "An Act to enable the people of the Illinois Territory to form a constitution and state government and for the admission of such state into the Union on an equal footing with the original states. Approved, April 18, 1818." "

Mr. Sanders moved that the consideration of the report of the committee on the article boundaries be postponed until tomorrow morning, which was agreed to. And a division having been called for, there were 31 in the affirmative and 16 in the negative.

The amendments reported by the committee on the article suffrage were then severally concurred in. The first, second, and third amendments reported by the committee on the article judiciary were then concurred in.

The question then being upon concurring in the fourth amendment of the committee, Mr. Chase moved to amend the same by striking out the words "is provided for," which was disagreed to. The fourth, fifth, sixth, seventh, eighth, ninth, and tenth amendments of the committee were then severally concurred in.

Mr. Chase moved to amend section 22 of the article by striking out the words "adapted to" and inserting the word "for," which was disagreed to.

The report of the committee on the article legislative was then taken up, and the amendments reported by the committee were severally concurred in.

The articles suffrage, judiciary, and legislative were referred to the committee on revision and arrangement.

On motion of Mr. Reymert the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Messrs. Sanders, Reymert, and Davenport by leave presented petitions from inhabitants of Racine County on the subject of homestead exemption.

Mr. Doran asked to be excused from the committee appointed to prepare an address to be submitted with the constitution, which was granted. The President appointed Mr. Prentiss as a member of said committee.

No. 16, article on exemption, was then taken up, when Mr. Lakin moved to amend the article by adding to the resolution as follows: "*Provided*, That every member of this convention who shall vote for a submission of this article as aforesaid shall in his proper person or by his agent subscribe the same before it shall be presented to the electors aforesaid for their adoption."

Mr. Lakin said that on almost every disputable question that had been before the convention gentlemen had called upon their opponents to come up to the mark and "show their hands," etc., and had frequently called for the ayes and noes for that purpose. The object of this amendment was to make gentlemen show their hands upon the exemption question. He wanted gentlemen who were willing to vote for this article to father it and sign their names to it and so send it before the people.

Mr. Rountree: I feel it my duty to express my views upon the necessity and propriety of engrafting this article into the constitution which this convention is about to submit to the people of this territory for their approval; and I will here state that the principle of exemption from forced sale of a limited amount of property I am decidedly in favor of and have ever been. While a member of the legislative council of this territory some eight or nine years ago I supported a bill which afterwards became a law, exempting a limited amount of property from forced sale; and should I be a member of the legislature of the future state of Wisconsin I should favor the passage of a law making liberal, equitable, and proper exemptions. But, sir, while I feel and express these sentiments in favor of suitable laws upon the subject, I do most earnestly oppose this article becoming a part of the constitution of our state. It is true that the proposition is to make a separate submission of this article, to be voted on at the same time that the constitution is submitted to the people to be voted for; to this I am equally opposed, for the reason that it is a proper subject for legislation. The wants, circumstances, and conditions of the people are continually changing. An exemption law that would be esteemed liberal, and answering all the wants of the people at this time, might be insufficient for their protection against want one or two years hence.

This is called by the peculiar friends of the measure the great principle of human rights; and they urge that it should be recognized in the fundamental law of the land—that the people demand it, and that nothing short of it will be satisfactory. To this argu-

No. 18, article on exemption, was then taken up, when Mr. Lakin moved to amend the article by adding to the resolution as follows: "Resolved, That every member of this convention who shall vote for a submission of this article as amended shall in his proper person or by his agent subscribe the same before it shall be presented to the electors at-large for their adoption."

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This is called by the peculiar friends of the measure the great principle of human rights; and they urge that it should be recognized in the fundamental law of the land—that the people demand it, and that nothing short of it will be satisfactory. To this argu-

ment I will say that so far as I know the wishes of the people upon the subject, they are adverse to the making of the article a part of the constitution or of submitting it as a separate article. From the eloquence and tenacity with which the friends of the measure urge its adoption upon the convention, we are led to conclude that the representatives of the people that are soon to occupy these halls as the immediate representatives of the people, elected by them and commissioned to do their will, will not feel as great a regard for the well-being of community as the peculiar friends of the people in this convention feel, and that the friends of the poor man will cease with the close of this convention. Sir, I maintain these are not fair and legitimate conclusions; that the members composing the legislature will come from the body of the people and will entertain views and feelings in common with them and will be safe persons to entrust with the enacting of such laws as the wants of the people demand; and that they will not disregard the will and wishes of the people, but will be quite as anxious to protect in safety the poor man with his family, as we are. And, sir, in the legislature it can be done and I hazard nothing in saying it will be done, sufficiently and properly.

This convention has recognized the principle of exemption by inserting a clause in the article called the bill of rights, which will be sufficient warrant for the passing of suitable laws upon the subject. It has not escaped the recollection of gentlemen that within less than one short year a constitution formed by the delegates of the people assembled as we are was rejected by a large vote, and that, too, after having been advocated by eloquent and learned gentlemen, publicly and privately, in every portion of the territory. The great and uncompromising objection to that instrument was such an article as this (but exempting a greater amount of property) in conjunction with the article known as the married woman's article. It is also true that there were contained in that instrument some other less objectionable articles, but I do believe the article here proposed contains as objectionable a feature as was contained in the old constitution, and my conclusion is that the people have by that vote repudiated this article as a constitutional provision.

Gentlemen say that this convention must either engraft this article into the constitution or make a separate submission of it; that unless we do, the people will be disappointed. I can say that

in the portion of the territory from which I came the people will be much disappointed if this convention does either engraft it into the constitution or submit the question separately. It is true, Mr. President, that, should the convention determine to force this article upon us, I would prefer that it should stand outside of rather than inside the constitution, believing as I do that it would be voted down by a large majority of the votes of this territory.

There is, sir, another and with me a very strong reason why this article should be rejected by this convention; and that is, I think we have now formed a good constitution, one that I can support and one that I can recommend to others; indeed, sir, but for two or three provisions (which I could wish were different) I should say that it is the very best constitution that I have ever seen, and it will, in my opinion, be adopted by the people almost by acclamation. And I now ask the friends of the exemption article, if it would be prudent to throw into this fair instrument a firebrand—an article that all must admit there is great dissension of opinion upon. Does even the progression that Democracy is making, as claimed by the friends of this measure, warrant so hazardous an enterprise? I think not, sir; and I think prudence dictates that we should not. It seems to me that gentlemen who advocate the submission of this article cannot vote against its adoption at the polls, notwithstanding the declaration made here, that they will oppose its adoption when they shall be called upon to vote for or against the article at the same time the constitution shall be voted upon. I do not understand how gentlemen can reconcile such a course with the rules of consistency which they say govern them. We are told by gentlemen that this is one of the measures peculiarly dear to the progressive Democrats of the age, and that we may as well oppose or try to arrest the mighty cataract of the great Niagara as to oppose this great principle of the Democratic party. I say to all such as wish to build their fame upon such foundations, that they are welcome to enjoy the glory derived from the measure. As for myself, I shall rest contented by voting against the article here, and shall do so hoping and believing that it may be defeated.

The amendment was disagreed to.

Mr. Castleman moved a reconsideration of the vote just taken.

He said he wished gentlemen to bear the responsibility of their acts on this subject—not to be enabled to cover up their tracks. He called for the ayes and noes.

Mr. Beall spoke.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 38, negative 26; for the vote see Appendix I, roll call 189].

Mr. Sanders said the amendment was intended as a ridiculous rider, and he too was glad that the ayes and noes would show who were in favor of it. Mr. King said he had voted for the reconsideration out of courtesy to those who desired to put the ayes and noes on record. But he would vote against the amendment, because he intended to vote against the whole article at any rate, and there was no use, therefore, in helping to change it.

The question was then put upon the adoption of the proviso, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 27, negative 38; for the vote see Appendix I, roll call 190].

Mr. Rountree moved a call of the convention, which was ordered, and Messrs. Fowler, Harvey, and Hollenbeck reported as absent.

Mr. Reymert moved that all further proceedings under the call be dispensed with, which was disagreed to.

The sergeant at arms was sent for the absent members.

The absentees having been reported in attendance, the question then recurred upon ordering the article to a third reading.

Mr. Fitzgerald said he was opposed to the exemption principle, and would therefore vote against inserting the article in the constitution or submitting it separately to the people. He had intended at first to vote for leaving it to the people, but on further reflection he had concluded that, as the measure was wrong and would be injurious to the people, there was no use in opening a door for its adoption. It would operate against the poor, who might wish to borrow or get credit, and he was satisfied the country did not need it, nor ask it. He was a poor man himself, but he was willing to pay his debts and wanted no laws by which he could evade it. Mr. Vanderpoel said he was sorry that the gentleman thought it his duty to pursue such a course, and especially he was sorry to see an Irishman oppose such a humane provision as the homestead exemption, when his own country exhibited so bitter a spectacle of the

miseries which this was designed to prevent. Mr. Fitzgerald said, in reply, that his countrymen never had asked for any law which would enable them to evade the payment of their just debts. They wanted no such assistance; they were willing to pay.

Mr. Estabrook said he would recapitulate the argument and show the present state of the question. Thus far nothing had been put in the constitution which would excite any opposition to it; and if we put nothing in it which was more improper, it would not probably be opposed by a single press or person. But we were now getting on dangerous ground. This was the first time the adoption of the constitution had been seriously endangered. There were indications now that a false step might be made which would render all our labors vain. He knew there were two sides to the exemption question and he respected the advocates of it. He knew they were very anxious to be gratified in the establishment of their favorite measure. But still there was a larger—tenfold larger—party who desired that we should let it alone, that we should not dirty our hands with it in any shape. Now he would ask, in all candor, which of these two parties should be gratified. If the wishes of the mass of the people were to prevail, the advocates of exemption would stand on the same ground as before. It would not injure their course or delay it at all. As soon as they could get a majority of the people in favor of it, they could establish it. But it would not be so on the other hand if the wishes of the smaller party were to prevail at this time. If their wishes were gratified, it was evident that the exemption article would be made the great question at the polls, and the adoption of the constitution might be endangered, or the attached article adopted on the popularity of the constitution. If the wishes of the smaller party prevailed, the larger was sure to lose; but if the wishes of the body of the people prevailed, the smaller party could lose nothing. How, then, could it be asked that the larger party should yield?

Mr. Estabrook said he was aware that much feeling had been aroused on this question and it was wonderful to see what exertions had been made by the advocates of exemption. It was a sight calculated to excite alarm and disgust. But a few days ago many gentlemen who were now in favor of the measure declared freely in private conversation that they were opposed to it. How was this to be accounted for? He had heard it whispered that there had been bargains and sales on foot. Was there not enough in these

maneuvers to excite alarm and disgust? If they were to prevail, the result could not be otherwise than disastrous. (Mr. Estabrook here read several letters from his constituents and others in regard to the petitions which had been presented for a homestead exemption.)

Now (said Mr. Estabrook) in view of the late overwhelming vote of the people against this measure and of the expressions which thus come up to us, shall we, to gratify the phantasies of diseased brains, degrade ourselves in the eyes of the world and insult our constituents by thrusting this measure upon them again? Shall we, from our lofty station of constitution-makers, come down and dabble in matters which would be disgraceful even for members of the legislature? He hoped not. He hoped gentlemen would consult their dignity better, not forgetting the wishes of their constituents, the fitness of things, and the mischiefs which a false step might engender.

Mr. McClellan said that so far as the town in which he lived was concerned, he would assure the gentleman from Walworth that he was very confident his correspondent from Wheatland was mistaken. If he knew anything of public sentiment among his constituents, there was a decided majority in favor of an exemption of some kind. His sentiments were well known before the late election. He had frequently been questioned on the subject. He had uniformly told them he did not believe it proper to incorporate the article in the constitution, as he believed it entirely legislative in its character; but he had pledged himself to his constituents that if the question of a separate submission came up before the convention he would vote for it, and he now felt that he would misrepresent their wishes if he did not perform his promise.

Mr. Gifford did not rise for the purpose of discussing the question at any length, but he wished to notice some remarks of the gentleman from Walworth (Mr. Estabrook). The gentleman had assured the convention that a very large majority of his constituents and, as he believed, of the people of the territory were opposed to the homestead exemption and yet he was unwilling to submit the question to them. If the gentleman was opposed to it himself and believed the people were so generally opposed to it, he did not see why he should be so much opposed to submitting the question to them. He (Mr. Gifford) did not wish to see it placed in the constitution without a special vote of the people; but he did wish to see

this question submitted to the people for their decision. If they did not want it, there was no danger of its adoption, and if they did want it, all efforts to prevent their having it would be unavailing.

Mr. Judd spoke. Mr. Beall made some remarks.

Mr. Larrabee regretted that the subject had elicited so much debate. He had hoped that both friends and opponents of the measure would have been content with simply voting upon it. He was himself conscientiously in favor of the principle and wished to see it adopted by the people as a part of the constitution and was therefore in favor of the proposition to submit the question. He believed the laws had generally been made for the benefit of the few to the disadvantage or neglect of the many, and he wished to give to the majority the advantages of such a law as a sort of offset for the many wrongs which had been committed upon them by unjust legislation. He was in favor of the measure upon principle and not because it was the particular thunder of this man or that. He regarded it as a great and important principle and would exhort its friends to cheer up and be assured that it would be recognized sooner or later; and if it failed then, they should not be discouraged but try it again.

Mr. Sanders said he had prepared a proposition of his own upon this subject with a view of offering it as a substitute; but at the request of friends he had concluded to withhold it until the proposition then before the convention was disposed of, and if that should be rejected he would then submit his. He was opposed to placing any exemption article in the constitution and would vote against it at the polls if the question were submitted to a popular vote. But at the same time he would yield to no man as an advocate of liberal exemptions. The exemption of the homestead was a measure demanded by the spirit of the age—it was demanded by the masses—it was a measure for the benefit of the million, and it must prevail ultimately—it could not long be smothered—they might as well attempt to smother a volcano. It was a measure in favor of the poor against the rich; and its progress could not be arrested. He had almost said that the Almighty himself could not arrest it and he did not know but he might say so with propriety, for it was impossible for God to do wrong. Still he was not in favor of placing the exemption in the constitution, but he would insist upon a separate submission of the question; it was demanded by the people.

Mr. Estabrook called for the proof that any such measure was demanded by the people. Mr. Sanders said he had letters from his constituents upon the subject, but unfortunately they were not within his reach at that moment—they were at his room and he could not exhibit them at that time. The writer of one of those letters, a very respectable man, stated that he did not believe there were three men in the whole town who were opposed to the separate submission of an exemption article, and he had many other letters urging him to sustain this measure and he was ready to do it, and would always insist upon the principle that the food and clothing of a family should not be taken to satisfy the creditor.

Mr. Chase said he had not studied law, like the man alluded to by the gentleman from Walworth, and was not, therefore, very smart; he did not make any pretensions to smartness at all, but he must repel, so far as he was concerned, the imputations of that gentleman that there had been bargains and sales and logrolling in regard to the measure before the convention. He could assure that gentleman, and every other, that there had been no bargaining, or buying, or selling, or logrolling with him. He detested such things as he did a pestilence or a war, and he would as soon be found promoting one as another of these plagues. As he had remarked on former occasions, he paddled his own canoe. He did not follow in the wake of any man or set of men; he entertained his own opinions and acted according to them, and left others to do the same. He did not, like the gentleman from Dodge (Mr. Judd) sustain this measure because he believed it to be popular, but because he believed it was right; nor should he, as that gentleman had avowed his intention to do, abandon it as soon as he found it was unpopular. If the question should be submitted to the people and they should reject it, he would be just as much in favor of it as he was at that moment, and would advocate it still. He had often labored with minorities for measures which he believed to be right, but which were, notwithstanding, decidedly unpopular. He was one of a very few who, several years ago, petitioned the legislature for the repeal of the collection laws, but he had no idea that it was popular, but he believed it was right, and believed so still; and had the proposition been brought up in the convention he would have voted for it. He was ready to vote for it there or anywhere else, at that time or any other time. So in regard to every other proposition: he was for or against it as he believed it to be right or wrong, and

not because he believed it was popular or unpopular.

Mr. Estabrook said he must ask pardon of the gentleman from Fond du Lac (Mr. Chase) if he supposed he had alluded to him in the remarks he had made about logrolling; he did not intend to implicate him in any such transaction. He believed him to be a very honest man. He listened to him on all occasions with great satisfaction, and was oftentimes delighted with his remarks, as with an orator, a poem, or a romance. The gentleman was a Fourierite, and he almost envied him the frame of mind in which he seemed to exist. He entertained lofty conceptions of the perfectibility of human society and human affairs generally, and seemed to luxuriate in bright visions of the future felicity which was to be secured to the human race by progress and reform. That was all very well. He believed that the gentleman was perfectly honest in his opinions, and he respected him for the frankness and independence with which he avowed and maintained them, and it was far from his intentions to impute to him the use of any dishonorable means to carry a point.

Mr. Estabrook wished gentlemen would not dodge the question. They professed to be opposed to placing it in the constitution—oh, no, they would not do that at all; they would vote against it there and at the polls, but they must submit it to the people! Oh, the dear people! Will you not let the sweet, dear people vote upon this question? Well, suppose the people should vote upon the question, and suppose the article be adopted by a small minority of the voters of the territory; where would it be then? Would it not be in the constitution, where gentlemen say they don't want to have it? If they do not want it in the constitution, why will they vote to place it there at all? He was prepared to vote against placing it in the constitution either directly or contingently, and to run the risk of the annihilation predicted by the gentleman from Dodge (Mr. Judd), and if he should happen to be annihilated as a Democrat he could follow the example of that gentleman and come out a Whig, for he believed his history was sufficient to establish the fact that renegades from the Democratic party were the first to receive fat offices from the Whigs.

The friends of this measure had endeavored to excite the sympathies of members by declaiming upon the cruelty and hardship of taking away the poor man's home—the poor man's farm; but he had never known an instance in the territory of a man's farm being

not because he believed it was popular or unpopular.

Mr. Estabrook said he must ask pardon of the gentleman from Fond du Lac (Mr. Chase) if he supposed he had alluded to him in the remarks he had made about logging; he did not intend to implicate him in any such transaction. He believed him to be a very honest man. He listened to him on all occasions with great satisfaction, and was oftentimes delighted with his remarks, as with an orator, a poet, or a romance. The gentleman was a Fourierite, and he almost envied him the frame of mind in which he seemed to exist. He entertained lofty conceptions of the perfectibility of human society and human affairs generally, and seemed to luxuriate in bright visions of the future felicity which was to be secured to the human race by progress and reform. That was all very well. He believed that the gentleman was perfectly honest in his opinions, and he respected him for the frankness and independence with which he avowed and maintained them, and it was far from his intentions to impute to him the use of any dishonorable means to carry a point.

Mr. Estabrook wished gentlemen would not dodge the question. They professed to be opposed to placing it in the constitution—oh, no, they would not do that at all; they would vote against it there and at the polls, but they must submit it to the people! Oh, a question! Will you not let the whole free people vote upon this question? Well, suppose the people should vote upon the question, and suppose the article be adopted by a small majority of the voters of the territory; where would it be then? Would it not be in the constitution, where gentlemen say they don't want to have it? If they do not want it in the constitution, why will they vote to place it there at all? He was prepared to vote against placing it in the constitution either directly or contingently, and to run the risk of the annihilation predicted by the gentleman from Dodge (Mr. Judd), and if he should happen to be annihilated as a Democrat he could follow the example of that gentleman and come out a Whig, for he believed his history was sufficient to establish the fact that renegades from the Democratic party were the first to receive fat offices from the Whigs.

The friends of this measure had endeavored to excite the sympathies of members by declaiming upon the cruelty and hardship of taking away the poor man's home—the poor man's farm; but he had never known an instance in the territory of a man's farm being

taken from him on execution, and he challenged every lawyer in the convention to cite a single instance of the kind from any part of the territory. All the declamation they had heard about the poor man's home was merely for effect; there was no real foundation for it, and the measure under consideration was not demanded either by the necessities of the poor or by the voice of the people; and no end could be accomplished by it but the gratification of a few men who stood committed to this particular kind of exemption and who seemed to imagine that their fate was coupled with it.

Mr. Doran said that as some sarcastic allusions had been made to him and his constituents, he would take occasion to say that had other gentlemen taken as much pains to ascertain the will of their constituents as he had done, there would have been no need of spending two or three days in the discussion of this question. As he had declared on a former occasion, when a candidate for the convention, expecting that this question would be brought up, he had taken special pains to ascertain the sentiments of the people of Milwaukee County upon it, and not one-fourth of the Democratic party were in favor of such an exemption, and the Whig party were almost to a man opposed to it. The people of Milwaukee County called for no such measure; they desired no such measure either in the constitution or submitted separately. Their minds were made up in regard to it. He was surprised to hear gentlemen call this a great principle, while they declared themselves opposed to placing it in the constitution—determined to vote for it as a separate article and to vote against it at the polls. The gentleman from Racine (Mr. Sanders) called it a great and even a Godlike principle, but he would vote against placing it in the constitution, and then he would vote for it as a separate article, and finally he would vote against it at the polls! He knew not what to think of such inconsistent and contradictory avowals upon the same question, as he had heard upon the one under consideration. As to his constituents, they were honest men and wished to stand before God and the world as such, and they would regard this provision as an attempt to brand them as knaves. They did not demand this measure, nor did they desire it, and they would regard it as an insult if such a proposition should be thrust before them. They did not wish to be compelled to go to the polls and vote themselves honest men or stand branded as knaves by a constitutional enactment.

Mr. Cole, of Grant, remarked that the subject had been discussed at great length, while, as appeared to him, but little had been said upon the real question at issue. The real question as he viewed it was whether they should place an exemption law in the constitution or leave it for the future action of the legislature. In the whole course of the discussion he had not heard anyone deny that the matter was a proper subject of legislation. As this had not been denied and could not be successfully, it was to him a matter of surprise and regret that it should not have been left, by general consent, to legislative action. For himself, all that he wished to know in regard to any proposition which might there be presented was whether it was constitutional or legislative in its character. If it was properly a subject of constitutional law, he was ready to bestow upon it a careful and, if necessary, a laborious consideration. On the other hand, if it was merely legislative in its character, he was ready to dismiss it at once without regard to its merits in other respects. As none pretended to deny that the proposition before them was a proper subject of legislation, he could not but hope it would be left where it belonged and not be suffered to encumber the constitution and distract the public mind in pondering its merits with a subject not connected by any sort of affinity with it.

Mr. Jackson said that Racine County had been alluded to as having sent a large number of petitions here asking for the incorporation of a homestead exemption into the constitution. Being a delegate from that county, he wished to say a few words before the vote was taken. It was true, a respectable number of petitions had been sent here from his county. He was acquainted with many of these petitioners, and they were men for whom he had a high respect and in whose judgment he had great confidence; yet in his opinion a majority of the people in that county were not in favor of this measure.

I believe (continued Mr. Jackson) I am as well acquainted with the public feeling of the people of that county on this subject as any man on this floor. Among the many letters I have received on the business of this convention, but one person has intimated his wish to have a specific exemption in the constitution. But we are now told to submit it separately to a vote of the people. Before I came here one, and only one, of my constituents advised me to go for a separate submission of this question. When it was first suggested to me I thought perhaps this might be the best way of disposing of

the matter. But upon more mature reflection I am convinced it is inexpedient to do so, and I believe the friends of this measure by urging it before the people now to be voted upon separately will defeat the object at which they profess to aim. Very many who are in favor of exemption are strongly opposed to putting it in the constitution. They say it should be left wholly to legislation, and if it is to be made a part of the constitution they will surely vote against it. I am in favor of exempting a homestead to the head of a family, and if a proper exemption law was submitted to a vote of the people by the legislature, I should vote for it. But if this question is submitted as proposed, I must vote against it; so will many others who are really in favor of a homestead exemption. It is my firm conviction, if submitted in this way it will be voted down by the people, and future legislatures will be told that the people have decided this matter and will be deterred from making provisions for such exemption. I repeat, a large portion of those in Racine County who are in favor of a real estate exemption are opposed to placing it in the constitution. To sustain this position I beg leave to read a short article which is found in a recent number of the *Southport Telegraph*. (Mr. Jackson here read from that paper.) Sir (said Mr. Jackson), I consider the *Telegraph* one of the ablest Democratic papers in the territory. Its editor (Mr. Sholes) is for exemption. Like the gentleman from Fond du Lac (Mr. Chase) he goes for abolishing all collection laws. He would exempt everything; yet it will be seen he is opposed to incorporating a particular exemption into the constitution. He thinks it would be better to leave it to future legislation, and I believe this is the feeling of the largest portion of the people of that county.

I am opposed to a separate submission of any part of the constitution. The people ought to know when they vote upon that instrument what it is to contain. Besides, the petitioners do not ask a separate submission of the question, and I feel justified in voting against this measure.

The question was then put upon ordering the article to be engrossed and read the third time, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 32; for the vote see Appendix I, roll call 191].

The convention then resolved itself into committee of the whole for the

further consideration of No. 15, article on miscellaneous provisions, Mr. Castleman in the chair. After some time spent therein the committee rose and by their chairman reported progress and asked leave to sit again. Leave was granted.

The convention then resolved itself into committee of the whole for the consideration of No. 21, article on the schedule, Mr. Kinne in the chair. After some time spent therein the committee rose and by their chairman reported progress and asked leave to sit again. Leave was granted, when on motion of Mr. A. G. Cole the convention adjourned.

The counties of Brown, Outagamie, Manitowish, and Sheboygan shall constitute the first senate district and shall elect one senator.

The counties of Columbia, Marquette, Portage, and Rusk shall constitute the second senate district and shall elect one senator.

The counties of Crawford, Chippewa, St. Croix, and La Pointe shall constitute the third senate district and shall elect one senator.

The counties of Fond du Lac and Winnebago shall constitute the fourth senate district and shall elect one senator.

The counties of Iron and Richland shall constitute the fifth senate district and shall elect one senator.

The county of Grant shall constitute the sixth senate district and shall elect one senator.

The county of Lafayette shall constitute the seventh senate district and shall elect one senator.

The county of Green shall constitute the eighth senate district and shall elect one senator.

The county of Dane shall constitute the ninth senate district and shall elect one senator.

The county of Dodge shall constitute the tenth senate district and shall elect one senator.

The county of Washington shall constitute the eleventh senate district and shall elect one senator.

The county of Jefferson shall constitute the twelfth senate district and shall elect one senator.

The county of Waukesha shall constitute the thirteenth senate district and shall elect one senator.

The county of Walworth shall constitute the fourteenth senate district and shall elect one senator.

The county of Rock shall constitute the fifteenth senate district and shall elect one senator.

The towns of Southport, Pike, Pleasant Prairie, Paris, Bristol, Brighton, Salem, and Wheatland in the county of Racine shall constitute the sixteenth senate district and shall elect one senator.

The towns of Berlin, Calumet, Mount Pleasant, Raymond, Norway, Rochester, Yorkville, and Burlington shall constitute the seventeenth senate district and shall elect one senator.

The third, fourth, and fifth wards of the city of Milwaukee, and the towns of Lake, Oak Creek, Franklin, and Greenfield in the county of

THURSDAY, JANUARY 27, 1848

Prayer by the Rev. Mr. Penman.

The journal of yesterday was read.

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, reported No. 22, article on districting members of the legislature, as follows: "Section —. Until there shall be a new apportionment, the senators and members of the assembly shall be apportioned among the several districts as follows:

The counties of Brown, Calumet, Manitowoc, and Sheboygan shall constitute the first senate district and shall elect one senator.

The counties of Columbia, Marquette, Portage, and Sauk shall constitute the second senate district and shall elect one senator.

The counties of Crawford, Chippewa, St. Croix, and La Pointe shall constitute the third senate district and shall elect one senator.

The counties of Fond du Lac and Winnebago shall constitute the fourth senate district and shall elect one senator.

The counties of Iowa and Richland shall constitute the fifth senate district and shall elect one senator.

The county of Grant shall constitute the sixth senate district and shall elect one senator.

The county of Lafayette shall constitute the seventh senate district and shall elect one senator.

The county of Green shall constitute the eighth senate district and shall elect one senator.

The county of Dane shall constitute the ninth senate district and shall elect one senator.

The county of Dodge shall constitute the tenth senate district and shall elect one senator.

The county of Washington shall constitute the eleventh senate district and shall elect one senator.

The county of Jefferson shall constitute the twelfth senate district and shall elect one senator.

The county of Waukesha shall constitute the thirteenth senate district and shall elect one senator.

The county of Walworth shall constitute the fourteenth senate district and shall elect one senator.

The county of Rock shall constitute the fifteenth senate district and shall elect one senator.

The towns of Southport, Pike, Pleasant Prairie, Paris, Bristol, Brighton, Salem, and Wheatland in the county of Racine shall constitute the sixteenth senate district and shall elect one senator.

The towns of Racine, Caledonia, Mount Pleasant, Raymond, Norway, Rochester, Yorkville, and Burlington shall constitute the seventeenth senate district and shall elect one senator.

The third, fourth, and fifth wards of the city of Milwaukee, and the towns of Lake, Oak Creek, Franklin, and Greenfield in the county of

THURSDAY, JANUARY 27, 1894

Prayer by the Rev. Mr. Foxman.

The Journal of yesterday was read.

Mr. Jovell, from the committee on executive, legislative, and administrative provisions, reported No. 22, article on districting members of the legislature, as follows: "Section -- Until there shall be a new apportionment, the senators and members of the assembly shall be apportioned among the several districts as follows:

The counties of Brown, Colman, Marshall, and Sibley shall constitute the first senate district and shall elect one senator.
The counties of Columbia, Martin, Portage, and Grant shall constitute the second senate district and shall elect one senator.
The counties of Crawford, Chippewa, St. Croix, and La Pointe shall constitute the third senate district and shall elect one senator.
The counties of Fond du Lac and Winnebago shall constitute the fourth senate district and shall elect one senator.
The counties of Iowa and Richland shall constitute the fifth senate district and shall elect one senator.
The county of Grant shall constitute the sixth senate district and shall elect one senator.
The county of Lafayette shall constitute the seventh senate district and shall elect one senator.
The county of Green shall constitute the eighth senate district and shall elect one senator.
The county of Dane shall constitute the ninth senate district and shall elect one senator.
The county of Dodge shall constitute the tenth senate district and shall elect one senator.
The county of Washington shall constitute the eleventh senate district and shall elect one senator.
The county of Jefferson shall constitute the twelfth senate district and shall elect one senator.
The county of Winnebago shall constitute the thirteenth senate district and shall elect one senator.
The county of Walworth shall constitute the fourteenth senate district and shall elect one senator.
The county of Rock shall constitute the fifteenth senate district and shall elect one senator.
The town of Southport, Village of Pleasant Prairie, Park, Bristol, Brighton, Salem, and Westland in the county of Racine shall constitute the sixteenth senate district and shall elect one senator.
The town of Racine, Cathedral Square, Mount Pleasant, Raymond, Norway, Rochester, Yorkville, and Burlington shall constitute the seventeenth senate district and shall elect one senator.
The third, fourth, and fifth wards of the city of Milwaukee, and the towns of Lake, Oak Creek, Franklin, and Greenfield in the county of

Milwaukee shall constitute the eighteenth senate district and shall elect one senator.

The first and second wards of the city of Milwaukee, and the towns of Milwaukee, Wauwatosa, and Granville in the county of Milwaukee shall constitute the nineteenth senate district and shall elect one senator.

The county of Brown shall constitute an assembly district and shall elect one member of assembly.

The county of Calumet shall constitute an assembly district and shall elect one member of assembly.

The county of Manitowoc shall constitute an assembly district and shall elect one member of assembly.

The county of Columbia shall constitute an assembly district and shall elect one member of assembly.

The counties of Crawford and Chippewa shall constitute an assembly district and shall elect one member of assembly.

The counties of St. Croix and La Pointe shall constitute an assembly district and shall elect one member of assembly.

The towns of Windsor, Sun Prairie, and Cottage Grove in the county of Dane shall constitute an assembly district and shall elect one member of assembly.

The towns of Madison, Cross Plains, Clarkson, Springfield, Verona, Montrose, and Greenfield in the county of Dane shall constitute an assembly district and shall elect one member of assembly.

The towns of Rome, Dunkirk, Christiana, Albion, Oregon, and Rutland in the county of Dane shall constitute an assembly district and shall elect one member of assembly.

The towns of Burnett, Chester, LeRoy, and Williamstown in the county of Dodge shall constitute an assembly district and shall elect one member of assembly.

The towns of Fairfield, Hubbard, and Rubicon in the county of Dodge shall constitute an assembly district and shall elect one member of assembly.

The towns of Hustisford, Ashippun, Lebanon, and Emmett in the county of Dodge shall constitute an assembly district and shall elect one member of assembly.

The towns of Elba, Lowell, Portland, and Clyman in the county of Dodge shall constitute an assembly district and shall elect one member of assembly.

The towns of Calamus, Beaver Dam, Fox Lake, and Trenton in the county of Dodge shall constitute an assembly district and shall elect one member of assembly.

The towns of Calumet, Forest, Auburn, Byron, Taycheedah, and Fond du Lac in the county of Fond du Lac shall constitute an assembly district and shall elect one member of assembly.

The towns of Alto, Metomen, Ceresco, Rosendale, Waupun, Oakfield, and Seven Mile Creek in the county of Fond du Lac shall constitute an assembly district and shall elect one member of assembly.

The precincts of Hazel Green, Fair Play, Smelters Grove, and Jamestown in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Platteville, Head of Platte, Centerville, Muscoda, and Fennimore in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Pleasant Valley, Potosi, Waterloo, Hurricane, and New Lisbon in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Beetown, Patch Grove, Cassville, Millville, and Lancaster in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The county of Green shall constitute an assembly district and shall elect one member of assembly.

The precincts of Dallas, Peddlers Creek, Mineral Point, and Yellowstone in the county of Iowa shall constitute an assembly district and shall elect one member of assembly.

The precincts of Franklin, Dodgeville, Porters Grove, Arena, and Percussion in the county of Iowa, and the county of Richland shall constitute an assembly district and shall elect one member of assembly.

The towns of Watertown, Aztalan, and Waterloo in the county of Jefferson shall constitute an assembly district and shall elect one member of assembly.

The towns of Ixonia, Concord, Sullivan, Hebron, Cold Spring, and Palmyra in the county of Jefferson shall constitute an assembly district and shall elect one member of assembly.

The towns of Lake Mills, Oakland, Koshkonong, and Farmington in the county of Jefferson shall constitute an assembly district and shall elect one member of assembly.

The precincts of Benton, Elk Grove, Belmont, Willow Springs, Prairie, and that part of Shullsburg precinct north of town one in the county of Lafayette shall constitute an assembly district and shall elect one member of assembly.

The precincts of Wiota, Wayne, Gratiot, White Oak Springs, Fever River, and that part of Shullsburg precinct south of town two in the county of Lafayette shall constitute an assembly district and shall elect one member of assembly.

The county of Marquette shall constitute an assembly district and shall elect one member of assembly.

The first ward of the city of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The second ward of the city of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The third ward of the city of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The fourth and fifth wards of the city of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The precincts of Hazel Grove, Fair Play, Goodness Grove, and Jamestown in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Plattville, Head of Prairie, Goodness Grove, and Farmington in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Pleasant Valley, Forest, Waterville, Huron, and New Lisbon in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Beestown, Patch Grove, Cornville, Millville, and Lancaster in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The county of Green shall constitute an assembly district and shall elect one member of assembly.

The precincts of Dallas, Pottsville, Mineral Point, and Yellowstone in the county of Iowa shall constitute an assembly district and shall elect one member of assembly.

The precincts of Franklin, Dodgeville, Porters Grove, Arden, and Trenchard in the county of Iowa, and the county of Rockland shall constitute an assembly district and shall elect one member of assembly.

The towns of Watertown, Arden, and Waterville in the county of Jefferson shall constitute an assembly district and shall elect one member of assembly.

The towns of Xenia, Concord, Sullivan, Lebanon, Cold Spring, and Palmyra in the county of Jefferson shall constitute an assembly district and shall elect one member of assembly.

The towns of Lake Mills, Oakland, Rockledge, and Rockington in the county of Jefferson shall constitute an assembly district and shall elect one member of assembly.

The precincts of Benton, Elk Grove, Belmont, Willow Springs, Prairie, and that part of Shullsburg precinct north of town one in the county of Lafayette shall constitute an assembly district and shall elect one member of assembly.

The precincts of Wata, Wayne, Garretts, White Oak Springs, Fawn River, and that part of Shullsburg precinct south of town two in the county of Lafayette shall constitute an assembly district and shall elect one member of assembly.

The county of Marquette shall constitute an assembly district and shall elect one member of assembly.

The first ward of the city of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The second ward of the city of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The third ward of the city of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The fourth and fifth wards of the city of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The towns of Franklin and Oak Creek in the county of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The towns of Greenfield and Lake in the county of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The towns of Granville, Wauwatosa, and Milwaukee in the county of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The county of Portage shall constitute an assembly district and shall elect one member of assembly.

The town of Racine in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Norway, Raymond, Caledonia, and Mount Pleasant in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Rochester, Burlington, and Yorkville in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Southport, Pike, and Pleasant Prairie in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Paris, Bristol, Brighton, Salem, and Wheatland in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Janesville and Bradford in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Beloit, Turtle, and Clinton in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Magnolia, Union, Porter, and Fulton in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Milton, Lima, and Johnstown in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Newark, Rock, Avon, Spring Valley, and Center in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The county of Sauk shall constitute an assembly district and shall elect one member of assembly.

Precincts numbered one, three, and seven in the county of Sheboygan shall constitute an assembly district and shall elect one member of assembly.

Precincts numbered two, four, five, and six in the county of Sheboygan shall constitute an assembly district and shall elect one member of assembly.

The towns of Franklin and Oak Creek in the county of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The towns of Greenfield and Lake in the county of Milwaukee shall constitute an assembly district and shall elect one member of assembly. The towns of Granville, Wauwatosa, and Milwaukee in the county of Milwaukee shall constitute an assembly district and shall elect one member of assembly.

The county of Portage shall constitute an assembly district and shall elect one member of assembly.

The town of Racine in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Norway, Raymond, Calumet, and Pleasant in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Rochester, Burlington, and Yorkville in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Southport, Pike, and Pleasant in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Paris, Bristol, Brighton, Salem, and Westland in the county of Racine shall constitute an assembly district and shall elect one member of assembly.

The towns of Janesville and Bradford in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Beloit, Tipton, and Grand in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Mukwonago, Union, Portage, and Fulton in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Milton, Lima, and Johnson in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Newark, Rock, Appleton, Valley, and Canton in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The county of Sauk shall constitute an assembly district and shall elect one member of assembly.

Precincts numbered one, three, and seven in the county of Sheboygan shall constitute an assembly district and shall elect one member of assembly.

Precincts numbered two, four, five, and six in the county of Sheboygan shall constitute an assembly district and shall elect one member of assembly.

The towns of Whitewater, La Grange, Richmond, and Sugar Creek in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Troy, East Troy, Lafayette, and Elkhorn in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Spring Prairie, Hudson, and Bloomfield in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Geneva, Linn, and Walworth in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Delavan, Darien, and Sharon in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Lisbon, Menomonee, and Brookfield in the county of Waukesha shall constitute an assembly district and shall elect one member of assembly.

The towns of Warren, Oconomowoc, Summit, and Ottawa in the county of Waukesha shall constitute an assembly district and shall elect one member of assembly.

The towns of Delafield, Genesee, and Pewaukee in the county of Waukesha shall constitute an assembly district and shall elect one member of assembly.

The towns of Waukesha and New Lisbon [sic] in the county of Waukesha shall constitute an assembly district and shall elect one member of assembly.

The towns of Eagle, Mukwonago, Vernon, and Muskego in the county of Waukesha shall constitute an assembly district and shall elect one member of assembly.

The towns of Port Washington, Fredonia, and Clarence in the county of Washington shall constitute an assembly district and shall elect one member of assembly.

The towns of Grafton and Jackson in the county of Washington shall constitute an assembly district and shall elect one member of assembly.

The towns of Mequon and Germantown in the county of Washington shall constitute an assembly district and shall elect one member of assembly.

The towns of Polk, Richfield, and Erin in the county of Washington shall constitute an assembly district and shall elect one member of assembly.

The towns of Hartford, Addison, West Bend, and North Bend in the county of Washington shall constitute an assembly district and shall elect one member of assembly.

The county of Winnebago shall constitute an assembly district and shall elect one member of assembly. "

The article was read the first and second times, and ordered printed.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 16, article on exemption.

Mr. Case, from the select committee on that subject, made the following report, which was read, to wit:

"The select committee to whom was referred the resolution to inquire into the propriety of providing for a sale of a portion of journals of this convention report that a subsequent resolution of the convention having provided for the disposal of all the said journals, the committee ask to be discharged from the further consideration of the subject.

"Respectfully submitted,

S. S. CASE
S. A. DAVENPORT
JOHN O'CONNOR"

Mr. Castleman presented a petition of W. W. Brown and others relative to submitting again the old constitution to the votes of the people. Mr. A. G. Cole moved that the petition be laid upon the table, which was agreed to.

Resolutions were introduced and read as follows, to wit:

By Mr. Lewis: "Resolved, That each member be allowed double the number of papers containing the printed constitution, at the time of the adjournment, that is now authorized weekly by the convention."

By Mr. Carter: "Resolved, That the use of this hall be tendered to the Rev. Mr. Read on next Sabbath at half past ten o'clock A.M. for divine services."

Mr. Case moved a reconsideration of the vote taken yesterday on ordering to be engrossed No. 16, article on exemption.

Mr. Lakin moved a call of the convention, which was ordered, and Messrs. Colley, Featherstonhaugh, [Fenton, Jackson], Kennedy, Kilbourn, Kinne, McClellan, Nichols, and Prentiss reported absent.

The sergeant at arms was sent for the absentees.

Pending the proceedings under the call, Mr. Castleman took occasion to point out what he believed to be an error in the journal of January 14. His name appeared on the journal as voting in the affirmative on the final passage of the article on banks and banking. He believed that he voted in the negative. If he had voted in the affirmative he had done so through mistake.

The absentees having been reported in attendance, the question was put upon reconsidering and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 35, negative 31; for the vote see Appendix I, roll call 192].

Resolution No. 1, introduced by Mr. Lyman on the twenty-fourth instant, was taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

The article was read the first and second times, and ordered printed. Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 18 article an exemption. Mr. Case, from the select committee on that subject, made the following report, which was read, to wit:

"The select committee to whom was referred the resolution to inquire into the propriety of providing for a sale of a portion of journals of this convention report that a subsequent resolution of the convention having provided for the disposal of all the said journals, the committee ask to be discharged from the further consideration of the subject."

"Respectfully submitted,

S. B. CASE
S. A. DAVENPORT
JOHN O'CONNOR

Mr. Castleman presented a petition of W. W. Brown and others relative to submitting again the old constitution to the votes of the people. Mr. A. G. Cole moved that the petition be laid upon the table, which was agreed to. Resolutions were introduced and read as follows, to wit:

By Mr. Lewis: "Resolved, That each member be allowed double the number of papers containing the printed constitution, at the time of the adjournment, that is now authorized weekly by the convention."

By Mr. Carter: "Resolved, That the use of this hall be tendered to the Rev. Mr. Rand on next Sabbath at half past ten o'clock and for subsequent times."

Mr. Case moved a reconsideration of the vote taken yesterday on ordering to be engrossed No. 18 article an exemption.

Mr. Jabin moved a call of the convention, which was ordered, and Messrs. Coffey, Tashersman, [Trenton, Jackson], Kennedy, Ellsworth, Kinn, McCallahan, Nichols, and Pringle reported absent. The sergeant at arms was sent for the absentees.

Pending the proceedings under the call, Mr. Castleman took occasion to point out what he believed to be an error in the journal of January 14. His name appeared on the journal as voting in the affirmative on the final passage of the article on banks and banking. He believed that he voted in the negative. If he had voted in the affirmative he had done so through mistake.

The absentees having been reported in attendance, the question was put upon reconsidering and was decided in the affirmative. And the vote and names having been called for and ordered, Messrs. who voted in the affirmative were [affirmative 38, negative 31; for the vote and Appendix I will call 1831]. Resolution No. 1, introduced by Mr. Lyman on the twenty-fourth instant, was taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 2, introduced by Mr. Estabrook on the twenty-fifth instant, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 41, negative 24; for the vote see Appendix I, roll call 193].

Mr. Dunn, from the committee on that subject, made the following report, to wit:

"The committee appointed to ascertain and report the expenses of the commission issued by the committee of the convention on the contested seat of the Hon. John O'Connor of Lafayette County by William S. Hamilton of the same county, and also to inquire into the expenses incurred therein by the sitting member and report the amount which in their opinion he is reasonably entitled to receive therefor, respectfully report that from the evidences before us the expenses incurred under the commission of the sitting member and of contestant are as follows, to wit:

Henry Waggoner, commission bill presented for sixteen days' services in taking depositions, \$5.00 per day,	
\$80, reduced to	\$64.00
Samuel Crawford, commission fees charged on deposition returned	5.00
John K. Williams, for returning commission and depositions to the capitol	12.00
	\$ 81.00

EXPENSES OF SITTING MEMBER

John K. Williams, attorney for Hon. John O'Connor, for services in taking depositions before commissioners, sixteen days	\$64.00
David W. Jones, attorney for Hon. John O'Connor, for services in taking depositions before commissioners at Elk Grove, Shullsburg, traveling and expenses	20.00
	\$ 84.00

EXPENSES OF WILLIAM S. HAMILTON CONTESTANT

Paid to witnesses, officers, etc., per vouchers	\$14.87
H. H. Beeman, deputy sheriff, for serving subpoenas	9.80
	\$ 24.67
	\$189.67

"Your committee have reduced the charges of Commissioner Waggoner and the attorneys of the Hon. John O'Connor to what we deem to be reasonable for the services rendered. The other charges are reasonable and proper and in the opinion of your committee should, with the charges as reduced, be allowed.

"Your committee, therefore, recommend the adoption of the following resolution: *Resolved*, That Henry Waggoner, commissioner appointed by a committee of this convention to take and report testimony, be and he is hereby allowed the sum of \$64 for services rendered; Samuel Crawford, also a commissioner, be and he is allowed \$5.00 for like services; John K. Williams, appointed by Commissioner Waggoner to convey to the capitol the commission and depositions taken, be and is hereby allowed the sum of \$12 for performing the service; Hon. John O'Connor, sitting member, be and he is hereby allowed the sum of \$84 for his reasonable expenses in defending the contest of his seat; and that William S. Hamilton, contestant, be and he is hereby allowed the sum of \$24.67 for expenses in fees to witnesses and officers incurred in conducting the contest; and that the president certify the respective claims for payment."

No. 16, article on exemption, was then taken up, when Mr. Case moved to amend section 1 by striking out all after the word "dollars" in the second line down to and including the word "dollars" in the fourth line.

Mr. Beall spoke in opposition to the amendment, which he said had been concocted in the Whig caucus the previous evening for the purpose of killing the article.

Mr. Reed said he would record his vote against the proposed amendment. He wanted nothing of the kind in the constitution and believed that the people were able to control themselves in this matter and regulate it through the legislature. As for the assertion of the gentleman from Fond du Lac that the amendment had been concocted in the Whig caucus of the night before, it was utterly without foundation. That subject had not been considered at the caucus.

Mr. O. Cole said that the notion of this amendment being a Whig caucus measure had its sole foundation in the fertile imagination of the gentleman from Fond du Lac (Mr. Beall), which frequently conjured up ghosts, hobgoblins, and chimeras dire. He did not envy him either his imagination or his associates.

Mr. Judd spoke.

Mr. Castleman said he was not at all surprised, after what he had seen for the last few days, that the friends of this measure should charge his colleague (Mr. Case) or any other man with bargain and corruption. His colleague should have remembered yesterday the story of poor old Tray—that he suffered for all the evil doings of his companions. The company in which his colleague was found yesterday knew better than any other the charges to which his associates laid him liable, and they had charged him with

bargain and corruption. He did not doubt the purity of his colleague's motives in acting with them yesterday, but hoped it would be a lesson to him in future. He would support the amendment because it approximated the article to the simple question of homestead exemption, unincumbered by other exemptions. The other matters were already submitted in the bill of rights—there left to the people. Its friends wished to take it out of the hands of the people by now stealing a march on them and getting it into the constitution where people could not reach, alter, or repeal it, after having tried it.

Mr. Case said that the gentleman from Fond du Lac (Mr. Beall) had charged directly that this amendment was the result of a caucus held the last evening. On this subject he would say that he had prepared the amendment yesterday and in the scramble for the floor had not an opportunity to present it. He had moved the reconsideration of the vote this morning for the purpose of introducing it. He could say with the gentleman from Fond du Lac on his right (Mr. Chase) that he paddled his own canoe; he acted without concert with anyone. He wished he could say as much for the gentleman from Fond du Lac on his left (Mr. Beall). Petitions had been sent in asking for a homestead exemption. He wished if they passed any exemption measure, to pass that which was asked for. His colleague (Mr. Castleman) had said he was in the situation of poor Tray in the story. So far as the question of exemption was concerned, he wished always to be so. He was in favor of the principle of exemption and always had been. When he was a member of the legislature of New York he fought for this principle as it was now being contended for here.

Mr. Fitzgerald hoped the amendment would not be adopted. If we were to have any exemption at all, it had better be as it was in the article. The very provision made by the amendment defeated the old constitution. He would be compelled to vote against it.

Mr. Harvey desired to counsel the friends of exemption not to allow the suggestions of their fears to appear to them as evidence of facts. The question of exemption had not come up in the caucus of the preceding evening. He would vote against this amendment and had steadily voted against all the amendments which had been offered to the article. There were gentlemen here who were attached to the principle of exemption and who had brought in the article as they wished it to stand. He was desirous of giving them

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the benefit of a full expression of the opinion of the convention on the article as they had presented it; he wished that those who had manufactured the thunder should have the full advantage of it. He was not moved by fears of any of the consequences suggested by the gentleman from Dodge. He was anxious only that the animal should not by any amendment lose its tail and be no longer a tadpole.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 8, negative 58; for the vote see Appendix I, roll call 194].

Mr. Chase moved to substitute for the [whole] article the following, viz.: "The legislature shall at its first regular session after the adoption of this constitution provide by law for the exemption from forced sale for any debt or liability contracted after the passage of such law, of a limited amount of land, the same being the homestead of any family, or inhabitants of the state, or in lieu thereof, at the option of such person, other real or personal property of equal value."

Mr. Chase said that he was not one of those who were prepared to say on this or any other subject which he held dear and considered important, that he must have it in a certain form or abandon it altogether. It had been held by certain friends of the measure here that they must have it in the particular form which they desired or let those who opposed it bear the consequences. If it was the intention of these gentlemen to make political capital out of this measure, he washed his hands of it entirely. He wished to create no divisions or factions in parties. He founded his course on principle. If they could not obtain the best possible system of exemption they must endeavor to obtain the next best to it. He was sorry to hear allusions made to political caucuses and political divisions. He was willing to believe that every Whig, as well as every Democratic member, was an honest man. He was willing to concede as much honesty to them as he claimed for himself, nor did he believe that they were engaged in any logrolling to make political capital. His principles were independent of other persons, and, as he believed, founded on truth and justice.

He had offered the substitute for certain reasons which must be evident to all members. It provided for a positive exemption. It created in the first place a homestead exemption and directed the legislature to pass a law carrying it into effect. All that the friends

of exemption asked was thus provided for, and the choice was left with the debtor what kind of property he would have exempted. It was positive in its nature and would meet all cases that could arise, and would not be submitted as a separate article to the people, thus avoiding one chance of defeat. Many a man who was friendly to the principle of homestead exemption would vote against the article at the polls on the ground that it was imperfect. Such would not be his case. He would vote for it as it stood. The substitute provided for an exemption of the homestead if the applicant so desired. It provided for the law but did not incorporate it in the constitution. There were many who preferred that it should be so arranged. There were many who desired that exemption might be made a subject of legislation instead of being incorporated in the constitution, because, if the latter course were adopted, the progression which was being rapidly made among the people would soon travel beyond the bounds fixed in the constitution. This he considered a well-founded objection and could not have voted for the article if the matter of further exemption had not been left open to the legislature. He believed in the progress of the age and of human nature in goodness and in truth. There was one other feature in his substitute to which he wished to call the attention of the convention. It did not fix the amount of dollars and cents. That was left open to the legislature to determine on; and it declared the principle that the legislature should provide for an exemption such as should meet the demand of equity and justice. It contained also the principle of equality, applying equally to persons holding real or personal estate, so that all might share in its benefits.

He would take one moment to allude to his course on this subject and on the proposition of the abolition of all laws for the collection of debts. He was one of those who were in favor of the latter principle. He had sent petitions to the legislature of the territory, asking the abolition of such laws; and when this subject was up yesterday he should have stated what might have had a bearing on the present subject—that these petitions were referred to a committee of the legislature, of which the honorable president of this convention was then chairman, and that he reported favorably on them. That gentleman deemed it his duty to take a different course from himself on the present subject, but he believed him to be an honest advocate of the principle of abolishing the laws for the collection of debts. He had introduced this substitute, not to produce

discord and division among men who advocated the principle of exemption, nor to produce dissension among parties, but in order to secure for the people, by law, the homestead exemption; and he hoped that it would not be voted down in order that gentlemen might make political capital out of it, or that any individuals might be killed off from the positions which they occupied in the dominant party. He trusted that those who had professed themselves friendly to the principle of exemption would not vote against it through any such motives.

Mr. Lakin moved to amend the substitute by striking out after the word "legislature" the word "shall" and inserting the word "may."

He said that the advocates of exemption on this floor had inquired in loud language whether those who were opposed to the principle were afraid to trust the people. It was not we, but they, who were afraid to trust them. We proposed, and all along had proposed, that this matter belonged directly to the people, who through their legislature could make just such a law as would meet their wants. The advocates of the measure proposed to tie the hands of the legislature. They say the legislature shall enact such a law. Is this the language of Democracy—of young Democracy? Yes, it is the language of those who call themselves "Progressives." It appears to me to be the language of dictation. They talk loudly of tyranny and oppression, but themselves tread in the very footsteps of those who tied the hands of the people.

He believed the gentleman from Fond du Lac (Mr. Chase) was consistent and honest in his views. But how gentlemen who held different doctrines from him and believed in individual rights and equal laws could maintain this principle was too much for him to understand. He for one was willing to trust the people; and he would ask those gentlemen who made such loud professions of progressive Democracy what would be their course if they should be members of the legislature, and the people should call on them to abolish this very measure. Would they refuse, and brave that fiery furnace of popular opinion with which they had threatened the opponents of this measure on this floor? They would find the fire too hot. It would melt off their dorsal appendages.

He was in favor of a practical exemption, but the proposed measure would shield the scoundrel who might cheat another of five hundred dollars, but did not protect the honest laborer. The gentle-

man said that it was equal in its operation, because it gave the applicant a choice whether to exempt an amount in real estate or in money. For that very reason it was unequal. The object of exemption was to protect what it was necessary for a man to have. But it was not necessary for every vagabond to have five hundred dollars in his pocket, which he may have obtained by fraudulent means. It was unequal inasmuch as it secured the same privileges to the single man, who had no one to look out for but himself, that it did to the man of family. If he had as many arms as Briareus and as many stones as were to be found on the rock-bound coast of New England, he would hurl them all at such a measure.

Mr. Beall spoke. Mr. Judd spoke.

Mr. Chase was aware that whoever might be the ill-omened Chatres [Samson?] who dared to touch this favored bantling he might expect that the walls would fall upon his devoted head. He knew the hoary locks would be sure to be shaken at him. He was prepared for it. He could not but be reminded of the lines of Shakespeare:

Who steals my purse, steals trash;
'Twas mine—'tis his—and has been slave to thousands.
But he that filches from me my good name,
Takes that which ne'er enriches him,
But leaves me poor indeed.

In whose lips did Shakespeare place these words? In those of Iago. The character and the sentiment may be applied here where they fit best. He knew it was intended by the gentleman who had last spoken that they should take their measure or nothing. It was not for the interests of the poor man they were laboring. All they cared for was the amount of political capital they could make. He did not insist that the vote should be taken on the proposition as contained in the article alone, and if it failed, that the result should be visited on the heads of the opponents of the measure. He thought half a loaf was better than no bread; and if he could not obtain the proposition as he wanted it, he would satisfy himself with what was next best. In this he considered that he was acting the part of the friend of the poor man. If those gentlemen who had last spoken attempted to steal a march on him, they would find themselves on the wrong track. Honesty and principle would always be borne out in the end. He was honest and consistent in his course and was not connected with any political clique of intriguing politicians.

Mr. Larrabee was opposed to the amendment. He was sorry that he found himself forced to differ from his colleagues and friends on this floor; but he felt obliged to vote for the substitute offered by Mr. Chase. If the article adopted yesterday could not be retained, he thought it the part of wisdom to take the next best proposition to it. He was satisfied the original article would not pass. The proposition now introduced by Mr. Chase was the next best and he would vote for it.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 41; for the vote see Appendix I, roll call 195].

Mr. Lovell moved to amend the substitute by striking out all after the word "state" and inserting the following: "*Provided*, That no such law shall have any force or effect until it shall have been submitted to a vote of the people and shall have been approved by a majority of the qualified electors voting on that subject. And *Provided*, further, That nothing in this section contained shall be so construed as to prohibit the legislature from exempting such other property from sale upon execution as they may deem expedient."

Mr. Lovell said he could not vote for a proposition which would exempt any other property save the homestead. He could not go for a proposition which would give to knaves the right of hoarding up property and not protect the poor. If the law was made, let it be the poor man's law and not one to protect the speculator. Let it be what it pretended to be; and if a majority of the people voted for it, let it become the law of the land. He believed that the clause in the original article, making it optional with the applicant to protect five hundred dollars in other property besides real estate, was inserted with a view to buying up the votes of dishonest men.

Certain gentlemen on this floor had seen fit in the course of their remarks on this subject to indulge in denunciation. At first, they had applied it pretty liberally to those who had voted against the article. Now, they cast it against the friends—and he believed the honest friends—of homestead exemption. Now the gentleman from Fond du Lac (Mr. Chase) offered a proposition which embraced all that had been asked—a homestead exemption. Yet these gentlemen professed themselves opposed to the proposition. Why? Because it cut out that part of the original article by which votes could be bought up and capital made. He believed the original article in all its details was a thing to catch votes, divide parties,

and build up men. If all that these gentlemen wanted was a homestead exemption, let them vote for the proposition submitted by Mr. Chase. If it should be amended as he proposed, he would vote for it himself.

Mr. Chase said he had no special objection to the amendment proposed by the gentleman from Racine (Mr. Lovell). The principal matter in which it differed from his proposition was the feature of a separate submission to the people. His chief objection to the amendment (and that was one hardly sufficient to induce him to vote against it) was that it would involve some delay.

Mr. Doran said that as they had gone on and progressed in the discussion of this subject they had got back to the point from which they originally started, and found that the legislature had full power over the matter of exemption. The only conviction which had been forced on his mind by the discussion of this subject was that the present was a progressive age and that the gentlemen who advocated the exemption article wished to resist this progress by a constitutional enactment. In a few days they had gained to their side of the question sixteen votes. Starting with sixteen, they had suddenly come up to thirty-two. Would not the historian who should hand down the history of this convention accord the result to the coalition by which this result was effected? He was delighted to see his friend from Fond du Lac (Mr. Chase) wash his hands of this coalition as soon as he possibly could.

They now found themselves, after two or three days' discussion, just at the point from which they had started. If, as some gentlemen had said, the force of progression was so great that the torrents of Niagara could not check it, why, in the name of wonder, would not the friends of this measure leave it in the hands of the people? Simply because certain gentlemen must have the credit for the measure. It was not the poor man's cause they advocated, but political capital which they were endeavoring to make for themselves.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 33; for the vote see Appendix I, roll call 196].

Mr. Sanders moved to amend the amendment by substituting therefor the following, viz.: "Section —. The legislature, at its first regular session after the adoption of this constitution, shall pass a law providing for the exemption of the homestead of a family from forced sale on execution, for any debt or

debts growing out of or founded upon contract made after the approval of such law: *Provided*, That such exemption shall not affect in any manner any mechanic's or laborer's lien or any mortgage lawfully obtained. The legislature shall at the time of the passage of said law provide for the submission thereof to the people, at the first succeeding general election.

"Section —. No such law shall take effect until it shall at a general election be submitted to the people and have received a majority of all the votes cast for and against it at such election; and if such law shall be approved it shall thereafter be in force until repealed or amended by a like vote."

And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 27, negative 38; for the vote see Appendix I, roll call 197].

The question was then put upon the adoption of the substitute of Mr. Chase, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 17, negative 49; for the vote see Appendix I, roll call 198].

Mr. Lakin moved a call of the convention, which was ordered, and all the members reported as present. Mr. Folts moved to amend the article by substituting therefor the following: "The legislature may exempt from forced sale on execution for debts hereafter created such a sum as they may deem expedient, to consist of real or personal property; but such exemption shall be equal in amount to all persons."

Mr. Larkin said the amendment of his friend from Jefferson (Mr. Folts) covered the entire ground. Now none of the friends of the measure could complain. Exemption was made equal to all—men, women, and children—white, black, and copper-colored—all must now vote for it.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 24, negative 42; for the vote see Appendix I, roll call 199].

Mr. Folts moved to amend section 2 by adding the following: "But such exemption shall be equal in amount to all persons"; which was agreed to.

The question was then put upon ordering the article to be engrossed and read the third time, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 37; for the vote see Appendix I, roll call 200].

Mr. Lovell moved a reconsideration of the vote just taken.

Mr. Lovell said as this subject had occupied four days of the session, and he feared the ghost of it might still haunt them, he wished to lay it forever and therefore he would move a reconsideration.

The motion was disagreed to.

On motion of Mr. Larkin ["Lakin" in MS] the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Mr. Sanders moved that the motion made by him on a previous day for a reconsideration of the vote on the passage of the article on boundaries be taken up, which was agreed to. The question was then put upon reconsidering, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 24; for the vote see Appendix I, roll call 201].

Mr. King moved to recommit the article to the committee with instructions to amend the same as follows:

BOUNDARIES

"Strike out section 1.

"Amend section 2 by striking out 'aforesaid' in second line and inserting in lieu thereof the words 'entitled "An Act to enable the people of Wisconsin Territory to form a constitution and state government and for the admission of such state into the Union. Approved August 6, 1846."'

"Also add to section 2 the following: 'And *Provided*, further, That the admission of this state into the Union, according to the boundaries described in the act of Congress aforesaid, shall not in any manner affect or prejudice the right of this state to the boundaries which are fixed and established for the fifth division or state of the Northwestern Territory, in and by the fifth article of compact in the ordinance of Congress for the government of the territory northwest of the river Ohio. Passed July 13, 1787.'"

Mr. Dunn said he had given his views on this subject before and he did not wish to waste words upon it now. He gave it as his sincere belief that if we did not accept definitely the boundaries prescribed by Congress we could not get admitted into the Union. This was not an unfounded opinion. It had been tried and proved so in other parallel cases. No state formed out of the territory northwest of the Ohio River had applied to Congress for admission without having its boundaries accurately defined in the constitution, except Michigan, and she was refused admission for that reason and kept out till she accepted the boundaries prescribed. This was a precedent exactly in point and decisive. Another reason was that an unsettled boundary would seriously embarrass us in establishing our courts and defining their districts and the limits of their jurisdiction. There was no constitutional means to settle questions of this nature, and he trusted no one wished to see the scenes of the "Toledo War" reenacted among us. We had settled this boundary

question once, and he hoped it would not be disturbed again without some new and powerful reason.

Mr. King said he regarded this as a question of right and not of expediency. If we were justly entitled to this disputed territory, it was incumbent on us to pursue that right; if not, then we should abandon it. He did not agree with the opinions of the gentleman from Lafayette (Mr. Dunn) in regard to our rights and the prospect of obtaining them, but he agreed with him in this, that the question ought not to be disturbed now without some new and valid reason. He thought that that reason existed in the fact that it had been discovered that the proviso requiring our assent to certain boundaries was an interpolation in the act of Congress, and we had acted upon the question under a misapprehension. The amendment he proposed accepted the boundaries prescribed by Congress, reserving the right to have our claims adjudicated hereafter by a competent tribunal. He thought we were bound to do as much as this.

Mr. Sanders thought the amendment would not accomplish the object of the mover. The convention must first settle whether they would repudiate the act of Congress of 1787. This he apprehended they would not do, as they would thereby repudiate all the authority they acted under. The terms of this act and of subsequent ones under it must be complied with. We could claim nothing on the score of right; we must ask it as a favor. If Congress could be induced to admit us and still leave our southern boundary rights for subsequent determination, he would be in favor of it, and he thought it might be done.

Mr. Rountree called attention to the fact that the state of Ohio was admitted into the Union with a boundary not definitely settled. He read an extract from the act of Congress in relation to it. He thought the gentleman from Lafayette was mistaken in the statement he had made. By the act of Congress of 1846 there were three specifications we were required to assent to. The acceptance of certain boundaries was one of them. He thought we should at least ask for what we conceived to be our right and not debar ourselves from all further claim if it was to be avoided.

Mr. Chase thought the proposition of the gentleman from Milwaukee (Mr. King), accepting and yet not accepting the boundaries prescribed by Congress, was puerile and absurd. He thought it was useless to encumber our admission by any such article.

Mr. Dunn said that the gentleman from Grant (Mr. Rountree) was himself much mistaken in regard to the admission of Ohio with unsettled boundaries, as he could not fail to see by a careful reading of the act.

Mr. Richardson: Mr. President—I am not inclined to think that there is any material difference of opinion between us and the most of our opponents. I believe that nearly all acknowledge the right of Wisconsin to all the territory embraced by the boundaries as prescribed in the Ordinance of 1787. But gentlemen upon this floor tell us that inasmuch as Congress has passed an act defining other boundaries than those fixed by said ordinance, Congress will not admit Wisconsin into the Union unless she consents to accept of said last fixed boundaries. Now I will, as I have on two former occasions, deny that we have any authority for any such conclusion. Gentlemen in taking this position virtually assume that Congress will not do justice to Wisconsin or that she has no rights beyond any boundary that Congress may fix for her. I for one do not believe that Congress will refuse justice to Wisconsin, and hence the propriety of adopting the proposition of the gentleman from Milwaukee. It asks for nothing more than that our rights, guaranteed by the Ordinance of 1787, shall not be prejudiced by our acceptance of the boundary line set forth in the act of our admission as a state.

Now, Mr. President, I contend that the irresistible conclusion is this, that if Wisconsin has rights to territory not included within the boundaries fixed by Congress in the act of 1846, she will be admitted with an open boundary, and the matter will be adjudicated and justice will be done. And if Wisconsin has no rights to any territory which Congress sees fit to withhold, then where is the propriety of refusing us admittance upon the conditions we ask? We ask only that our rights be not prejudiced, nor our claims; and, if we have no rights, Congress is aware of the fact and will have nothing to fear from our admission upon our own proposition. But the honorable gentleman from Racine (Mr. Lovell) denies, at least virtually, that Congress will not [*sic*] do us justice in this matter and cites Michigan as an instance where injustice was done in a like case. Now whether justice was done Michigan or not, I contend that Congress did by its action in said case virtually acknowledge the right of Michigan to the territory in dispute between her

and Ohio. The honorable gentleman from Racine and other honorable gentlemen further argue that if we have rights, as contended for by us who go for the adoption of the amendment offered by the honorable gentleman from Milwaukee (Mr. King), it is inexpedient to assert our rights, lest we are kept out of the Union for some two or three years, and the honorable gentleman from Racine has made an appeal to every gentleman upon this floor to know whether anyone is bold and daring enough to assume the responsibility of doing an act that may have the effect to prevent our admission into the Union for some time and thereby prevent Wisconsin casting an electoral vote for president in 1848. In answer to the gentleman's appeal, I as one of the representatives of the people am now ready to stand up here in my place and take any responsibility upon myself which will result from asserting the rights of my constituents, fearless of consequences. Our honorable president has given as his opinion that Wisconsin has no right as to territory, except so much as Congress may think proper to grant to her, and gives as a reason for holding this doctrine, that in his opinion the common consent provided for in the Ordinance of 1787 has been given for us by the Congress of the United States—hence we must come to the conclusion that said ordinance is a nullity. Now, sir, I would ask our honorable president whether he believes that Congress has any right to form more than five states within the Northwestern Territory.

Mr. Lovell said the whole course of congressional legislation showed that there was no chance of our getting admitted into the Union with an unsettled boundary. But the present posture of affairs made the chance more desperate still. There were many important questions on which the North and South were divided; and the South could command a sufficient majority to keep out an ally to the North on every plausible pretext. In relation to the presidential question, also, the Whigs would be united against us in the same way. And again, Illinois, Ohio, and other states were interested against us, or had taken adverse positions in former times, and would not now desert them. Under these circumstances he thought there was not the slightest ground to hope that we could be admitted without accepting the prescribed boundaries, and he thought it would be folly to hazard our admission in pursuit of such a phantasm.

Mr. Judd spoke.

Mr. Rountree reminded the convention that the very proviso requiring our acceptance of certain boundaries had been struck out by Congress. That showed that our acceptance was not looked upon by them as an unalterable condition.

Mr. Doran said if we had any right to the territory we claimed on our south boundary, we ought to preserve that right, regardless of the political considerations mentioned by the gentleman from Racine (Mr. Lovell). He thought Congress was not the only tribunal. If so the Ordinance of 1787 was a nullity. The Supreme Court was the ultimate and proper tribunal to which we had a right to appeal, and he would not vote for giving up our claims without an effort to have them properly adjudicated.

Mr. Martin said he felt called upon, as reference had been freely and frequently made to the act of 1846, under which we were framing a constitution preparatory to our admission into the Union as a state, to make a few suggestions upon the proposition before the convention. He apprehended gentlemen were mistaken when they declared that an interpolation had been made in that act. The bill, as originally reported in Congress, was in the same language as the printed copy before us, and the mistake occurred, he presumed, by copying from the bill instead of referring to the form in which it finally passed and was published among the acts of that session. When the bill was under consideration in the House of Representatives, the clause requiring the assent of Wisconsin to the boundaries therein prescribed was struck out. The reason for it was this: Congress had or had not the right to fix the limits of the remaining state to be formed in the old Northwestern Territory. If she had the right, there was no necessity of asking Wisconsin to assent to and accept the boundaries prescribed in the act. If, on the contrary, she possessed no such right, the definition of limits contained in that act would be a gross injustice, as it deprived the people of what legally and justly was theirs under the ordinance. Under this view, and because the proviso might be regarded as an admission that Wisconsin had territorial rights which were about to be infringed, it was struck from the bill by a decisive vote.

The better opinion of men who have examined the subject with great care is that the power of Congress on this question of boundaries is absolute and unqualified. The Ordinance of 1787, which is declared to be irrepealable without common consent, has been

altered with that sanction. Illinois was admitted into the Union with us. Much the greater portion of the people within the limits of the "fifth state" (as it is called) under the article of compact have always been and are now residents in that part of it within her limits and assent to her jurisdiction. There are half a million inhabitants residing west of Lake Michigan and north of the line drawn through the southerly bend of that lake, of whom 300,000 are within the bounds of that state. Can we, then, constituting the minority of 200,000, expect to control that majority and set up a claim to that line, with any propriety? Besides, the bounds of Illinois were fixed with our assent given by Congress as our representative in the arrangement. He thought it was clear that the common consent had already been given, which was necessary to alter the provisions of the ordinance; and if it had not, the people residing within the limits of Illinois and comprising the majority of those interested in the question were those who should demand any right secured by her articles of compact.

He did not think we could now be successful in prosecuting a claim to the whole territory up to the British line on the northwest. He was in favor of requesting a change of boundary so as to include the valuable country in the valley of the St. Croix and thought Congress would accede to our request. If we ask too much, we shall be thrown back upon the line mentioned in the act of 1846. But this small tract will leave our state about 52,000 square miles still. It required only a slight addition to the size of our state, unimportant to any but ourselves. That portion of the territory was clearly never contemplated as a part of the country over which the ordinance was to operate, as the whole has been at different times in dispute between the United States and Great Britain, and its extent was never fully settled between the parties until 1842. It is entirely idle, then, to set up a claim to it under that instrument. Let us adhere to the proposition contained in the article we have adopted, and no delay will occur in our admission as a state. When the act authorizing us to form a state government was before the House, he had, as delegate, and out of respect to the opinions of a large portion of our citizens, proposed an amendment allowing this convention to fix such boundary on the north as they should think proper; not, however, exceeding the limits of the present territory of Wisconsin. This proposition met with favor in the committee, but was rejected on a call of the ayes and noes in the House, by a

vote of more than two to one. He did not feel authorized to surrender voluntarily any part of what is called the "fifth state" and insisted upon our being entitled to the whole. But from all that transpired on that occasion he was satisfied that, if we assume that ground now, and present the issue in our constitution, it will delay our admission into the Union until we yield our position and consent to the line given in the act of Congress. Iowa had set up a similar claim to the country north of her present limits and was compelled to abandon it before she could procure the sanction of Congress to her organization as a state.

The example of Michigan had been cited to show that if we assert the right to all the territory claimed we may force from Congress an equivalent for that portion of it of which we have been deprived. The cases are by no means parallel. Ohio was authorized to form a state government with the ordinance line on the north. Michigan as early as 1805 was made a territory with the same line as her southern boundary. She had possession of the country and continued to exercise jurisdiction over it for thirty years and until she applied for admission into the Union. The country claimed by her was populous, and she had her courts and municipal authorities established in it. No power short of physical force could stay the execution of her laws or introduce those of another state to supersede them. This force was applied, and she resisted it successfully, and in this attitude she presented herself before Congress for admission—a position she could not be induced to abandon until her claim was amicably adjusted by granting her an equivalent for the territory she surrendered to Ohio.

The condition of the question so far as Wisconsin is concerned is entirely different. All that we might claim beyond the boundary prescribed in the article we have adopted upon that subject would be either in the adverse possession of Illinois or a barren and inhospitable tract of country over which our jurisdiction would be merely nominal. On either side our authority would not extend in fact, and we should hold it only by a naked claim under a disputed and very questionable right. No one can anticipate that we could ever succeed in gaining the territory or making our jurisdiction over it complete. The only consequence of our asserting the claim set forth in the amendment would be to delay our admission into the Union until we abandoned it.

Mr. Dunn moved a call of the convention, which was ordered, and Messrs. A. G. Cole, Colley, Estabrook, Fenton, Harvey, Kilbourn, and Root reported absent. Messrs. Kilbourn and A. G. Cole were excused from their attendance.

Mr. Kinne moved that all further proceedings under the call be dispensed with, which was agreed to.

Mr. Sanders moved to amend instructions, as follows: "That committee amend by striking out in first line 'ordained and,' and 'consent and' in the second line, and also all between the word 'same' in the eleventh line to the word 'viz.' in the thirteenth line, and insert in lieu thereof 'shall be the boundaries of the state of Wisconsin,' and also strike out section 3."

Mr. Reed said that as delegates to form a constitution they had no authority to give up any rights which Wisconsin might possess. The amendment of the gentleman from Milwaukee merely reserved the privilege of making our rights appear hereafter, if we could. It did not require the assent of Congress to any specific claim. He thought we should at least do so much.

The motion was disagreed to.

The question was then put upon the motion to refer with instructions, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 14, negative 46; for the vote see Appendix I, roll call 202].

The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 46, negative 12; for the vote see Appendix I, roll call 203].

The report of the committee on revision, on the article boundaries, was then taken up, and the amendments reported by the committee were severally concurred in.

Mr. Dunn, from the committee on revision and arrangement, by leave made the following report, to wit:

"The committee on revision and arrangement respectfully report the articles on education and school funds and on banks and banking, with corrections and suggestions, in which they ask the concurrence of the convention.

EDUCATION AND SCHOOL FUNDS

"Title. Strike out 'and school funds.'

"Section 2. Suggest striking out 'except in time of war' in sixth line; substitute in seventh line 'collected' for 'assessed.' Strike out in fifteenth line 'lying within the state.' Transpose in the seventeenth line 'grants' so as to read 'two grants last mentioned,' etc.

"In first paragraph of subdivision, second line, strike out 'town' and insert 'school,' and strike out in third line 'school,' and substitute 'common' for 'primary' in first line.

"Section 3. In second and third lines strike out 'throughout the state'; also, 'equally' in the fourth line, and in the fifth line 'to whom tuition shall be gratis,' and insert after 'fee' in fourth line 'and without charge per tuition'; substitute 'them' for 'in said schools' in last line.

"Section 4. In second line substitute 'common' for 'district' or 'primary' and also [alter?] the whole section so as to read 'Each town and city shall be required to raise by tax annually for the support of common schools therein a sum not less than one-half of the amount received by such town or city, respectively, for school purposes, from the income of the school fund.'

"Section 5. In the third line substitute 'common' for 'district'; and in same line 'proportion' for 'ratio.' In seventh line strike out 'in manner afore-said.' In ninth line substitute 'maintained' for 'kept up.'

"Section 6. In eighth line strike out 'irrevocably'; and in ninth line 'afore-said.'

"Section 7. In third line substitute 'therefrom' for 'from the same.'

"Section 8. Alter so as to read: 'Provision shall be made by law for the sale of all school and university lands, after they shall have been appropriated; and when any portion of such lands shall be sold and the purchase money shall not be paid at the time of sale, the commissioners shall take security by mortgage upon the lands sold for the sum remaining unpaid, with seven per cent interest thereon, payable annually at the office of the treasurer. The commissioners shall be authorized to execute a good and sufficient conveyance to all purchasers of such lands and to discharge any mortgages taken as security when the sums due thereon shall have been paid.

"The commissioners shall have power to withhold from sale any portion of such lands, when they shall deem it expedient, and shall invest all moneys arising from the sale of such lands as well as all other university and school lands in such manner as the legislature shall provide, and shall give such security for the faithful performance of their duties as may be required by law.'"

BANKS AND BANKING

"Section 1. Strike out in fifth line 'in accordance with the following section of' and insert 'as provided.'

"Section 2. Strike out in first line 'of this state shall have power to' and insert 'may'; strike out 'said' and insert 'no such grant or'; and substitute 'any' for 'no' before 'force'; transpose the words 'on that subject' so as to stand before the words 'at such election.'

"The committee suggest that the article may be added to article on incorporations."

The amendments of the committee on revision were then severally concurred in.

The articles on boundaries, education and school funds, and banks and banking were then referred to the committee on revision and arrangement.

The convention then resolved itself into committee of the whole for the further consideration of No. 15 [21?], article on schedule, Mr. Kinne in the

chair. And after some time spent therein the committee rose and by their chairman reported progress thereon and asked leave to sit again. Leave was granted.

Mr. Kinne moved that the convention adjourn, which was disagreed to. Mr. Chase moved that the convention adjourn, until ten o'clock tomorrow morning, which was agreed to.

County, Mr. Larrabee moved that the petition be laid upon the table, which was agreed to.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the articles on incorporations and on amendments, with corrections and suggestions, in which they ask the concurrence of the convention.

AMENDMENTS

"Section 2. After so as to read: 'If at any time a majority of the senate and assembly shall deem it necessary to call a convention to revise or change this constitution, they shall recommend to the electors to vote for or against a convention at the next election for members of the legislature. And if it shall appear that a majority of the electors voting thereon have voted for a convention, the legislature shall at its next session provide for calling such convention.'

"First section, in thirteenth and fourteenth lines, strike out the words 'qualified to vote for members of the legislature.'

INCORPORATIONS

"Section 1. Sixth line, substitute 'enacted' for 'coming'."

Mr. Fowler, from the committee on incidental expenses, made the following report, to wit:

"The committee on incidental expenses, to whom was referred the communication of J. G. Knapp, superintendent of territorial property, report that Mr. Knapp presented to the committee the following bills paid as per vouchers, to wit:

Hale and Chapman's bill for stationery	\$501.50
Hale and Chapman's bill for stationery	198.25
Hale and Chapman's bill for envelope paper	12.25
J. C. Fairchild's bill of lamp	2.50
Ladington and King's bill of locks, oil, candles, etc.	111.01
T. J. Blair's bill of lamp chimneys	5.35
Hathaway and Ward's bill of spittoons	24.65
Abner Kirby's bill of knives	197.32
Abel Dunning's bill of freight	4.08
Deen and Co's bill of oil, sandsticks, pails, and cups	22.00
	\$1234.50

chair. And after some time spent therein the committee rose and by their chairman reported progress therein and asked leave to sit again. Leave was granted.

Mr. Kline moved that the convention adjourn, which was disagreed to. Mr. Chase moved that the convention adjourn until ten o'clock tomorrow morning, which was agreed to.

The convention then adjourned until ten o'clock tomorrow morning. The committee on the part of the convention then adjourned until ten o'clock tomorrow morning. The committee on the part of the convention then adjourned until ten o'clock tomorrow morning.

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FRIDAY, JANUARY 28, 1848

Prayer by the Rev. Mr. Read.

The journal of yesterday was read and corrected.

Mr. Wheeler presented a petition from sundry inhabitants of Dane County, requiring the old constitution again to be submitted to the votes of the people. Mr. Larrabee moved that the petition be laid upon the table, which was agreed to.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the articles on incorporations and on amendments, with corrections and suggestions, in which they ask the concurrence of the convention.

AMENDMENTS

"Section 2. Alter so as to read, 'If at any time a majority of the senate and assembly shall deem it necessary to call a convention to revise or change this constitution, they shall recommend to the electors to vote for or against a convention at the next election for members of the legislature. And if it shall appear that a majority of the electors voting thereon have voted for a convention, the legislature shall at its next session provide for calling such convention.'

"First section, in thirteenth and fourteenth lines, strike out the words 'qualified to vote for members of the legislature.' "

INCORPORATIONS

"Section 1. Sixth line, substitute 'enacted' for 'coming.' "

Mr. Fowler, from the committee on incidental expenses, made the following report, to wit:

"The committee on incidental expenses, to whom was referred the communication of J. G. Knapp, superintendent of territorial property, report that Mr. Knapp presented to the committee the following bills paid as per vouchers, to wit:

Hale and Chapman's bill for stationery	\$391.80
Hale and Chapman's bill for stationery	198.25
Hale and Chapman's bill for envelope paper	12.25
J. C. Fairchild's bill of lamp	3.50
Ludington and King's bill of locks, oil, candles, etc.	111.01
T. J. Blair's bill of lamp chimneys	8.25
Hathaway and Hurd's bill of spittoons	24.50
Abner Kirby's bill of knives	107.25
Abel Dunning's bill of freight	4.88
Dean and Co.'s bill of oil, candlesticks, pails, and cups	23.00

\$884.69

Exclusive of a bill for his own services and expenses going to Milwaukee to make his purchases, for which he charges	54.50
Making the total sum disbursed by him	\$939.19
To which he has received an appropriation made by the legislature of	\$690.00
Also an appropriation made by the convention to pay incidental expenses of	\$220.00
Making the total amount received by him	\$910.00

"The settlement of which the committee prefer leaving to the legislature, as he will have to account to them for all money received by him as such superintendent, and recommend the adoption of the following resolution: '*Resolved*, That the secretary of this convention furnish each branch of the legislature with a copy of this report.'

A. FOWLER,
Chairman."

Resolutions were introduced and read as follows, to wit:

By Mr. Beall: "WHEREAS, A large portion of our fellow citizens, the Germans and Norwegians, cannot be benefited by the provisions made for the publication of the forthcoming constitution—the circulation of papers in their language not exceeding 1,500 copies; and WHEREAS, It is desirable and due to so large a portion of our population that the fundamental law of our new state should be laid before them in their own language, so as to enable them to vote understandingly; therefore, *Resolved*, That the publisher of the *Wisconsin Banner* (Mr. Schœffler) is hereby authorized to translate said constitution into the German language and distribute 6,000 extra copies of his paper containing the constitution, in such a manner among the Germans as may be deemed most expedient and proper.

"*Resolved*, That the publisher of the *Nordlyset* (J. D. Reymert Esq.) is hereby authorized and requested to translate the constitution into the Norwegian language and to distribute 4,000 extra copies of his paper among the Norwegian residents in such manner as may be deemed expedient.

"*Resolved*, That the president of this convention shall contract with those publishers and issue his certificate to them; and the treasurer of the territory is authorized to pay the amount of the same as a part of the incidental expenses of the convention."

By Mr. King: "*Resolved*, That the committee on revision be instructed so to alter the resolutions relative to the public lands as to strike out, in the seventh and eighth lines, first resolution, the words 'the proceeds of so much thereof as shall have been sold by the territory of Wisconsin,' and insert 'remaining unsold'; and so to amend the second resolution as to provide that in case the odd-numbered sections shall be granted to the state as part of the school fund, such lands shall be sold in the same manner as the school lands."

Mr. King moved that the fifth rule be suspended for the consideration of the last named resolution now, which was agreed to.

Mr. King moved to amend the instructions by striking out in the third resolution, second line, the word "aforesaid" and inserting "above requested."

Exclusive of a bill for his own services and expenses going to Milwaukee to make his purchases, for which he charges \$4.50

Making the total sum disbursed by him \$230.10
To which he has received an appropriation made by the legis-
lature of \$600.00
Also an appropriation made by the convention to pay incidental
expenses of \$230.00

Making the total amount received by him \$610.00

"The settlement of which the committee desires leaving to the legislature as he will have to account to them for all money received by him as such superintendent, and recommend the adoption of the following resolution: Re- solved, That the secretary of this convention furnish each branch of the legis- lature with a copy of this report."

A. Fowler,
Chairman."

Resolutions were introduced and read as follows, to wit:
By Mr. Heath: "WHEREAS, A large portion of our fellow citizens, the Germans and Norwegians, cannot be benefited by the provisions made for the publication of the forthcoming constitution—the circulation of papers in their language not exceeding 1,500 copies; and WHEREAS, it is desirable and due to so large a portion of our population that the fundamental law of our new state should be laid before them in their own language, so as to enable them to vote understandingly; therefore, Resolved, That the publisher of the Wis- consin Banner (Mr. Schaeffer) is hereby authorized to translate said consti- tution into the German language and distribute 4,000 extra copies of his paper containing the constitution, in such a manner among the Germans as may be deemed most expedient and proper."

"Resolved, That the publisher of the Norweger (A. D. Holstad Esp) is hereby authorized and requested to translate the constitution into the Nor- wegian language and to distribute 4,000 extra copies of his paper among the Norwegian residents in such manner as may be deemed expedient."

"Resolved, That the president of this convention shall contract with those publishers and issue his certificate to them; and the treasurer of the territory is authorized to pay the amount of the same as a part of the incidental ex- penses of the convention."

By Mr. King: "Resolved, That the committee on revision be instructed as to alter the resolutions relative to the public lands as to strike out in the seventh and eighth lines first resolution, the words 'the proceeds of as much thereof as shall have been sold by the territory of Wisconsin,' and insert 're- maining unsold'; and so to amend the second resolution as to provide that if the odd-numbered sections shall be granted to the state as part of the school fund, such lands shall be sold in the same manner as the school lands."

Mr. King moved that the fifth rule be suspended for the consideration of the last named resolution now, which was agreed to.
Mr. King moved to amend the instructions by striking out in the third resolution, second line, the word "notorials," and inserting "above requested."

Also, in fourth resolution, sixteenth line, by striking out the words "in that behalf."

Mr. Whiton made some remarks.

Mr. Prentiss thought the same rule did not apply to the canal lands and the school lands. The canal lands lay together in a body and were heavily timbered. If the odd sections were not made subject to the right of preëmption, the effect would be to prevent their improvement and retard the growth of the country. The settlers on these lands would not be satisfied with the amendment proposed by the resolution. The first branch of the instructions seemed to him very proper.

Mr. Whiton thought the settlement of the country would be equally retarded by the remainder of the five hundred thousand acres of land appropriated to public schools, and to which the principles of preëmption did not apply. He could see no propriety in making a distinction in favor of the canal lands. Mr. Vanderpoel concurred in the views of Mr. Whiton. He thought that, having provided for the protection of the interests of the present settlers on the canal lands, they had gone as far as they should go. He wished to see the school fund augmented and the lands sold at the best rates.

The motion was disagreed to. And a division having been called for, there were 17 in the affirmative, negatives not counted.

Mr. Castleman moved to lay the resolution on the table, which was disagreed to. And a division having been called for, there were 20 in the affirmative and 30 in the negative.

Mr. Estabrook said that if he understood the object of the resolution he was in favor of it so far as the first branch of the instructions was concerned. As regarded the other, he cared but little. He thought the portion of the land which had been sold should not form any portion of the school fund. It was very desirable to obtain from Congress an appropriation to defray the expenses of this convention and the previous one. All these expenses had been paid out of the canal fund. The mode most likely to be successful of obtaining such an appropriation would be to ask not to have the land which had been sold considered as a portion of the five hundred thousand acres.

Mr. Vanderpoel thought that if the resolution did not go so far as to protect the interests of those who already occupied the odd

also, in fourth resolution, sixteenth line, by striking out the words "in that behalf."

Mr. Whitton made some remarks.

Mr. Prentiss thought the same rule did not apply to the canal lands and the school lands. The canal lands lay together in a body and were heavily timbered. If the odd sections were not made subject to the right of preemption, the effect would be to prevent their improvement and retard the growth of the country. The settlers on these lands would not be satisfied with the amendment proposed by the resolution. The first branch of the instructions seemed to him very proper.

Mr. Whitton thought the settlement of the country would be equally retarded by the remainder of the five hundred thousand acres of land appropriated to public schools, and to which the principles of preemption did not apply. He could see no propriety in making a distinction in favor of the canal lands. Mr. Vanderpoel concurred in the views of Mr. Whitton. He thought that having provided for the protection of the interests of the present settlers on the canal lands, they had gone as far as they should go. He wished to see the school fund augmented and the lands sold at the best rates.

The motion was disagreed to. And a division having been called for, there were 17 in the affirmative, negatives not counted.
Mr. Castelman moved to lay the resolution on the table, which was disagreed to. And a division having been called for, there were 20 in the affirmative and 26 in the negative.

Mr. Estabrook said that if he understood the object of the resolution he was in favor of it so far as the first branch of the instructions was concerned. As regarded the other, he cared but little. He thought the portion of the land which had been sold should not form any portion of the school fund. It was very desirable to obtain from Congress an appropriation to defray the expenses of this convention and the previous one. All these expenses had been paid out of the canal fund. The mode most likely to be successful of obtaining such an appropriation would be to ask not to have the land which had been sold considered as a portion of the five hundred thousand acres.
Mr. Vanderpoel thought that if the resolution did not go so far as to protect the interests of those who already occupied the odd

sections, it should do so. The actual settlers should be protected, and unless the resolution was put in such a shape as to provide for that, he could not vote for it.

Mr. Castleman moved to amend the instructions by adding: "*Provided*, That all persons who are now or may be settled on any of the said odd sections at the time of the adoption of this constitution shall be entitled to preëmption as on lands belonging to the general government," which was agreed to. The question was then put upon the adoption of the resolution as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 61, negative 1; for the vote see Appendix I, roll call 204].

Resolution No. 3, introduced by Mr. Carter yesterday, was taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 2, introduced by Mr. Lewis yesterday, was taken up.

The morning hour having expired, Mr. Lewis moved that the rules be suspended, which was agreed to. The question was then put upon the adoption of the resolution, and was decided in the affirmative.

Mr. Fenton moved a reconsideration of the vote taken on the adoption of resolution No. 3, which was disagreed to. And a division having been called for, there were 22 in the affirmative and 26 in the negative.

Mr. O'Connor by leave introduced the following resolution, which was read, to wit: "*Resolved*, That this convention adjourn sine die on Saturday, the twenty-ninth instant, at six o'clock P.M."

The report of the committee on revision and arrangement was taken up, and the amendments of the committee to articles incorporations and amendments were severally concurred in.

The convention then resolved itself into committee of the whole for the consideration of No. 15, article on miscellaneous provisions; No. 22, article on districting representatives; No. 23, section on the executive [Sec. 23 of No. 1, article on executive], Mr. King in the chair.

On motion of Mr. Dunn the committee took up the section proposed to be added to the article executive, authorizing the governor at any time to convene the legislature when the public interest should demand it and to change the place of its sessions in case of danger from invasion or the prevalence of contagious disease. The committee agreed to the section without amendment.

The article on miscellaneous provisions having been agreed to,

The committee then rose and by their chairman reported back No. 15, article on miscellaneous provisions, and No. 22, article on districting representatives, with amendments; and No. 23, section —, on executive [Sec. 23 of No. 1, on executive], without amendment.

The question was then put upon ordering section —, on the executive, to be engrossed and read the third time, and was decided in the affirmative.

The question being on concurring in the amendments of the committee to No. 15, article on miscellaneous provisions, Mr. Jackson called for a division of the question.

The first, second, and third amendments, which were: "First. Strike out the word 'day' and insert the word 'Monday.'"

"Second. Add to section 1, as follows: 'And the general election shall be holden on the Tuesday succeeding the first Monday in November in each year.'"

"Third. Amend section 2 by inserting between the words 'disqualified' and 'from' the words 'as an elector and,' " were then severally concurred in.

The question was then put upon concurring in the fourth amendment, which was to add as an additional section the following: "Section —. All legal voters resident upon Indian territory within the state of Wisconsin shall under the restrictions prescribed by this constitution have the right to vote in the counties nearest their residence."

Mr. Kennedy moved to amend the amendment by adding the words "for state and United States officers," which was agreed to. The amendment as amended was then concurred in.

The fifth amendment, which was to amend section 3 by striking out the words "postmasters excepted," was then nonconcurred in. And a division having been called for, there were 23 in the affirmative and 26 in the negative.

The sixth, seventh, and eighth amendments, which were: "Sixth. Strike out section 4.

"Seventh. Strike out section 5.

"Eighth. Add as an additional section the following: 'Section —. The elective officers of the legislature, other than the presiding officers, shall be one chief clerk and a sergeant at arms by each house,' " were then severally concurred in.

The question was then put upon concurring in the ninth amendment, which was: "Section 29. No county shall be divided or have any part stricken therefrom without submitting the question to a vote of the people of the county; nor unless a majority of all the legal voters of the county voting on the question shall vote for the same.

"Section 30. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed by law and a majority of the voters of the county voting on the question shall have voted in favor of its removal to such point."

Mr. Lovell was opposed to it. He thought it would be a very bad provision in the constitution and would work injury to individuals. It might happen that a strip of land would be put on to a county by the legislature before the county was much settled. Afterwards, those living in that strip might desire to be set off to the adjoining county; and it might be right that they should be. It might often happen, however, that a majority of the inhabitants of

the county would oppose their wishes through a reluctance to diminish the size of the county. There was as much pride of territory in counties as had been exhibited here in reference to the boundaries of the state or as might be seen in the discussion of such questions in Congress. It was wrong to put it in the power of a majority to place a minority in a place where they ought not to be. The same argument applied with equal force to the second amendment. County seats were places in which the whole county was interested and they ought not to be located in some obscure situation merely because it was central and because the people could not agree upon any other.

He proposed to examine a little into the history of this county seat business in the territory. In the county of Walworth there was a great difficulty in settling this matter. They had tried to adjust the matter by voting on it, but could not agree on any place where it ought to be. Finally they determined on quieting the difference by locating it in the center of the county, a spot in itself unsuitable as any they could have selected. When the county seat was first put there, it was a mere quagmire, though now things were in a better condition. A similar difficulty arose in the county of Washington. The matter was submitted to the people. They all voted differently and did not agree on any place, so that for some time there was no fixed organization of courts in the county. Finally, the last legislature was obliged to interfere and locate the county seat temporarily for five years until the people could agree where to place it.

This plan of submitting this question to the people never settled it right. It was only a species of arbitration and went on the principle of splitting the difference. This was not properly a constitutional provision, and the matter could with perfect safety be left to the legislature. It was true that the legislature would be besieged about this matter, but they would be at any rate. If anything, they would be more harassed under the proposed system than if it were left entirely to them. There would be a perpetual clamor for a submission to the people. It would be said every year that there had been a great change of public opinion in the county on the subject. It must be submitted again. And thus the people would be kept continually voting on the question, after once having decided it.

Mr. Richardson expressed himself in favor of the amendment. Mr. Vanderpoel was also in favor of the amendment. He could not agree with Mr. Lovell in his views. He thought the amendment would tend to prevent constant legislation and to suppress local jealousies on the question of sending members to the legislature. He knew of many cases where the fear of having counties divided or cut up had prevented the voters in them from sending their best men to the legislature.

And pending the question, on motion of Mr. Chase the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

The pending question being on concurring in the ninth amendment of the committee to No. 15, article on miscellaneous provisions,

Mr. Larrabee said he had stated his reasons when in committee why he was in favor of leaving to the people of the several counties the question of their division. The principal one was that these questions gave great trouble to the legislature, the great body of whom never could have any adequate knowledge of their real merits; and in nine cases out of ten the division and location of the county seats were made in accordance with the wishes of certain interested individuals and not in accordance with those of the great body of the people. He thought it should be left to a fair vote of the people. They were best acquainted with the circumstances and necessities of the case, and they were the ones interested. The creation of a great number of small counties, as it had usually been done, was a great evil. They were cut up by the arts of politicians and speculators to promote their political advancement or to secure county seats in places in which they were interested. He had known instances of this kind. The people of the county were the ones in whose hands these things should be placed. They had to build the courthouses and jails and pay all the expenses of county government; and these burdens ought not to be doubled against their will by the intrigues of politicians. He therefore hoped the amendment he had offered would be adopted.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 44, negative 10; for the vote see Appendix I, roll call 205].

Mr. Chase moved to amend the article by adding the following as an additional section, viz.: "The legislature shall provide by law for the exemption from forced sale of a limited amount of land, the same being the homestead of any family, when the same shall not exceed in value a sum to be fixed by such law, and may make such other exemptions as they deem expedient."

Mr. Chase said he offered this amendment simply to get a fair test of the ayes and noes on the general subject of homestead exemption. He had not been able to do this yesterday, owing to the multiplicity of propositions and the peculiarities which might have influenced the votes upon each. He now called for the ayes and noes.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 37; for the vote see Appendix I, roll call 206].

Mr. Harvey moved to amend the article by adding as an additional section the following, to wit: "Section —. The right of the laborer to payment for his labor shall be recognized by the passage of wholesome lien laws, conveying rights as equally as practicable to every class of laborers to a lien upon any species of property upon which their beneficial industry shall have been bestowed." And the question having been put, it was decided in the negative.

Mr. Judd moved to amend the article by adding as an additional section the following, to wit: "Section —. The rents, issues, and profits of the real estate of any married woman and the interest of her husband in her right in real estate which belonged to her before her marriage or which she may have acquired by device or inheritance during coverture and all personal property belonging to any married woman at the time of her marriage shall be and remain her separate property and shall during coverture be exempt from attachment or levy of execution for the debts of her said husband. And no conveyance of such real estate made during coverture by such husband of such rents, issues, and profits, or of any interest in such real estate shall be valid, unless the same be by deed executed by the wife jointly with her husband and acknowledged by him in such manner as a deed of conveyance to real estate is required to be acknowledged. When a married woman has a separate property at the time of marriage such property shall be liable for her debts contracted before marriage. Laws shall be passed providing for the registry of a married woman's separate property and more clearly defining her rights thereto."

Mr. Judd spoke in favor of this amendment.

Mr. Vanderpoel said he was astonished to see the gentleman from Dodge offering and supporting such a proposition. But a few minutes ago he had voted against a provision for the exemption of a man's homestead: now he offered a proposition for the exemption of the property of women. Mr. Vanderpoel said he thought this was inconsistent and unjust. He would not vote for thus transferring the breeches.

Mr. Chase moved to amend the article by adding the following as an additional section, viz.: "The legislature shall provide by law for the exemption from forced sale of a limited amount of land, the same being the homestead of any family, when the same shall not exceed in value a sum to be fixed by such law, and may make such other exemptions as they deem expedient."

Mr. Chase said he offered this amendment simply to get a fair test of the eyes and noses on the general subject of homestead exemption. He had not been able to do this yesterday, owing to the multiplicity of propositions and the peculiarities which might have influenced the votes upon each. He now called for the eyes and noses.

The question was then put and was decided in the negative. And the eyes and noses having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 27; for the vote see Appendix I, roll call 203].

Mr. Harvey moved to amend the article by adding as an additional section the following, to wit: "Section — The right of the laborer to payment for his labor shall be recognized by the passage of wholesome laws, recognizing rights as equally as practicable to every class of laborers to a lien upon any species of property upon which their beneficial industry shall have been bestowed." And the question having been put it was decided in the negative.

Mr. Judd moved to amend the article by adding as an additional section the following, to wit: "Section — The rents, issues, and profits of the real estate of any married woman and the interest of her husband in her right in real estate which belonged to her before her marriage or which she may have acquired by devise or intestate descent during coverture and all personal property belonging to any married woman at the time of her marriage shall be and remain her separate property and shall during coverture be exempt from attachment or levy of execution for the debts of her said husband, and no coverture of such real estate made during coverture by such husband of such rents, issues, and profits, or of any interest in such real estate shall be valid, unless the same be by deed executed by the wife jointly with her husband and acknowledged by him in such manner as a deed of conveyance to real estate is required to be acknowledged. When a married woman has a separate property at the time of marriage such property shall be liable for her debts contracted before marriage. Laws shall be passed providing for the registry of a married woman's separate property and more clearly defining her rights therein."

Mr. Judd spoke in favor of this amendment.

Mr. Vanderpeet said he was astonished to see the gentleman from Dodge offering and supporting such a proposition. But a few minutes ago he had voted against a provision for the exemption of a man's homestead; now he offered a proposition for the exemption of the property of women. Mr. Vanderpeet said he thought this was inconsistent and unjust. He would not vote for thus transferring the protection.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 5, negative 56; for the vote see Appendix I, roll call 207].

Mr. Estabrook, from the committee on education and school funds, made the following report, to wit:

"The committee on education and school funds, to whom was referred the resolution of the convention directing said committee to inquire into the expediency of providing a coat of arms for the state, beg leave to report that they have duly considered the subject so referred to them and submit to the convention the following resolution: 'It shall be the duty of the legislature to provide a great seal for the state, which shall be kept by the secretary of state; and all official acts of the governor, his approbation of the laws excepted, shall be thereby authenticated.'"

Mr. Estabrook moved that the resolution be adopted and added as an additional section to the article under consideration. Mr. Larrabee moved to amend the resolution by striking out the word "great" before "seal," which was disagreed to. The resolution was then adopted.

Mr. Chase moved to amend the article by adding as an additional section the following, viz.: "The legislature shall provide such alteration in the common law as will abolish the practice of taking life as a penalty for crime." And the question having been put, it was decided in the negative.

The question being upon concurring in the amendments of the committee of the whole to No. 21, schedule, which were: "First. Amend the fourth section by inserting after the word 'state' in the fifteenth line the following words, to wit: 'and all offenses committed against the laws of the territory of Wisconsin, before the change from a territorial to a state government, and which shall not be prosecuted before said change, may be prosecuted in the name and by the authority of the state of Wisconsin with like effect as though the said change had not taken place.'

"Second. Strike out in section 10 the words 'except for judges of the supreme court and circuit judges' in the second and third lines of the twelfth section; also, all after the word 'mentioned' in the eighth line of the printed bill, in section 12.

"Third. Amend section 12 by inserting the following after the word 'territory' in the second line, to wit: 'Provided, That no elector shall be entitled to vote except in the town, ward, or precinct where he resides.'

"Fourth. Substitute the following for section 14: 'Section 14. The senators first elected in the even numbered districts, the governor, lieutenant governor, and other state officers first elected under the constitution, shall enter upon the duties of their respective offices on the first Monday of June next, and shall continue in office for one year from the first Monday of January next. The senators first elected in the odd-numbered senate districts, and the members of the assembly, first elected, shall enter upon their duties respectively on the said first Monday of June next, and shall continue in office until the said first Monday of January next,' they were then concurred in.

Mr. Lovell moved that the article be laid on the table, which was agreed to.

No. 22, article on districting representatives, was then taken up. And the question being on concurring in the amendments of the committee of the whole, which were: "Amend as to the county of Racine:

First. The towns of Burlington, Wheatland, and Salem in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Brighton, Bristol, Paris, and Pike in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Southport and Pleasant Prairie in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Racine and Mount Pleasant in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Rochester, Norway, Yorkville, Raymond, and Caledonia in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

Second. The towns of Burlington, Wheatland, Salem, Brighton, Bristol, Paris, Pike, Southport, and Pleasant Prairie in the county of Racine shall constitute the sixteenth senate district and shall elect one senator.

The towns of Racine, Mount Pleasant, Rochester, Norway, Yorkville, Raymond, and Caledonia in the county of Racine shall constitute The seventeenth senate district and shall elect one senator," Mr. Sanders called for a division of the question.

The question was then put, first upon the amendment of the committee relative to the senate district. Mr. Reymert moved to amend the amendments as follows: "Strike out all that refers to senatorial districts in the county of Racine, and insert:

"The towns of Southport, Pleasant Prairie, Pike, Mount Pleasant, Caledonia, Racine, and Raymond shall constitute the sixteenth senate district, and shall elect one senator.

The towns of Wheatland, Burlington, Rochester, Salem, Brighton, Yorkville, Norway, Paris, and Bristol shall constitute the seventeenth senate district and shall elect one senator."

And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 27; for the vote see Appendix I, roll call 208].

The question was then put upon concurring in the amendment as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 30, negative 27; for the vote see Appendix I, roll call 209].

Mr. McClellan moved a reconsideration of the vote just taken. And the question having been put, it was decided in the negative. And a division having been called for, there were 17 in the affirmative and 22 ["32" in MS] in the negative.

Mr. Jackson moved that the article be recommitted to committee No. 2, with instructions to report the same as it was originally reported by the committee, which was agreed to. And a division having been called for, there were 31 in the affirmative and 16 in the negative.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on the judiciary, who were instructed 'to inquire into the expediency of providing for uniformity in deeds for the conveyance of real estate,' respectfully report that in their opinion it is inexpedient and unnecessary to provide for the object of the resolution by any article in the constitution. The legislature has such power over the subject as it may be policy to exercise at any time."

Mr. King moved that the rules be suspended for the consideration of the resolutions now, which was agreed to.

The report and resolution of the select committee, relative to the expenses of the contested seat of the Hon. John O'Connor, were then taken up.

Mr. Dunn moved to amend the report by transferring from the account of William S. Hamilton to that of John O'Connor the sum of \$9.80, which was agreed to. And the question being upon the adoption of the resolution, Mr. Fox called for a division of the question.

The question was first put upon the adoption of that portion of the resolution paying to William S. Hamilton the sum of \$14.87, and was decided in the negative. The question was then put upon the other portion of the resolution, and was decided in the affirmative.

Mr. Richardson by leave reported as correctly engrossed section —, on the executive. The question was then put upon the passage of the section, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 60; for the vote see Appendix I, roll call 210].

Mr. Richardson moved that the convention adjourn, which was disagreed to.

Mr. Lovell, from the committee on executive, legislative, and administrative provisions, reported No. 22, article on districting representatives, as originally reported in accordance with the instructions of the convention.

Mr. Rountree moved to amend the article as follows, to wit: "In case the county of Grant shall be entitled to five members of assembly, then the districts shall be as follows: 'Strike out all that relates to assembly districts in Grant County and insert:

The precincts of Hazel Green, Fair Play, Jamestown, and Smelser's Grove in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Platteville and Head of Platte in the county of Grant shall constitute an assembly district and shall elect one member

of assembly.

The precincts of Centerville, Muscoda, Fennimore, Lancaster, Hurricane, and New Lisbon in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Potosi, Pleasant Valley, and Waterloo in the county of Grant shall constitute an assembly district and shall elect one member of assembly.

The precincts of Beetown, Cassville, Patch Grove, and Millville in the county of Grant shall constitute an assembly district and shall elect one member of assembly.'"

Mr. Richardson: I wish to make a few remarks before the vote is taken. It appears from the returns of the census last taken in Grant that she is entitled to one more member of assembly than has been apportioned to her. And as to the correctness of the census returns from Grant as made unofficially, I will appeal to the honorable gentleman from Lafayette (Judge Dunn), who is well acquainted with the gentleman authorized to take said census, if he feels at liberty to state to this convention, whether, in his opinion, the county of Grant contains the number of inhabitants set down by said returns. I believe the county of Waukesha is in the same condition as Grant. That is, she is not fully represented in our apportionment of representatives, and I now appeal to all gentlemen of this convention whether they are not willing to do an act of strict and simple justice to these two counties.

And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 27, negative 32; for the vote see Appendix I, roll call 211].

Mr. Chase moved to amend the article by adding the following: "Provided, That any towns hereafter organized may be added by the legislature to either of the adjoining districts." And the question having been put, it was decided in the affirmative.

Mr. Foot moved to amend the article by adding as follows: "Provided, That should the legislature at its next session, to be held on the first Monday in February next, or at any time thereafter, alter the boundaries or divide the town of Center, they may attach such portion of it to the district lying north of it as they may deem expedient." And the question having been put, it was decided in the affirmative.

Mr. Nichols moved to amend the article "so that the town of Oregon shall be added to the assembly district in which Madison is included." And the question having been put, it was decided in the affirmative.

Mr. A. G. Cole moved to amend the article as follows, to wit: "Amend

of assembly.
The precincts of Centerville, Muskego, Farmington, Lancaster, Har-
ness, and New Lisbon in the county of Grant shall constitute an
assembly district and shall elect one member of assembly.
The precincts of Potawatomi, Pleasant Valley, and Watrous in the
county of Grant shall constitute an assembly district and shall elect one
member of assembly.
The precincts of Beestown, Cassville, Patch Grove, and Millville in
the county of Grant shall constitute an assembly district and shall elect
one member of assembly."

Mr. Richardson: I wish to make a few remarks before the
vote is taken. It appears from the returns of the census last taken
in Grant that she is entitled to one more member of assembly than
has been apportioned to her. And as to the correctness of the
census returns from Grant as made unofficially, I will appeal to the
honorable gentleman from Lafayette (Judge Dunn), who is well
acquainted with the gentleman authorized to take said census. If
he feels at liberty to state to this convention, whether, in his opin-
ion, the county of Grant contains the number of inhabitants set
down by said returns. I believe the county of Waukesha is in the
same condition as Grant. That is, she is not fully represented in
our apportionment of representatives, and I now appeal to all gen-
tlemen of this convention whether they are not willing to do an
act of strict and simple justice to these two counties.

And the question having been put it was decided in the negative. And
the yes and noes having been called for and ordered, those who voted in the
affirmative were [affirmative 27, negative 22; for the vote see Appendix I,
roll call 211].

Mr. Chase moved to amend the article by adding the following: "Provided,
that any towns hereafter organized may be added by the legislature to either
of the adjoining districts." And the question having been put it was decided
in the affirmative.

Mr. Foot moved to amend the article by adding as follows: "Provided,
that should the legislature at its next session, to be held on the first Monday in
February next, or at any time thereafter, alter the boundaries or divide the
town of Center, they may attach such portion of it to the district lying north
of it as they may deem expedient." And the question having been put it was
decided in the affirmative.

Mr. Nichols moved to amend the article "so that the town of Oregon shall
be added to the assembly district in which Madison is included." And the
question having been put it was decided in the affirmative.

Mr. A. G. Cole moved to amend the article as follows: "Amend

the report in reference to the county of Racine as follows: "The towns of Burlington, Wheatland, Salem, Brighton, Bristol, Paris, Pike, Southport, and Pleasant Prairie in the county of Racine shall constitute the sixteenth senate district and shall elect one senator.

"The towns of Racine, Mount Pleasant, Rochester, Norway, Yorkville, Raymond, and Caledonia in the county of Racine shall constitute the seventeenth ["seventh" in MS] senate district and shall elect one senator."

And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 4, negative 53; for the vote see Appendix I, roll call 212].

Mr. Jackson moved to amend the article as follows, viz.: "Strike out all that part which relates to districts in the county of Rock, and insert:

The towns of Beloit, Newark, and Avon in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

[The towns of Turtle, Clinton, Bradford, and Johnstown in the county of Rock shall constitute an assembly district and shall elect one member of assembly.]

The towns of Lima, Milton, Fulton, and Porter in the county of Rock shall constitute an election district and shall elect one member of assembly.

The towns of Union, Magnolia, Spring Valley, and Center in the county of Rock shall constitute an assembly district and shall elect one member of assembly.

The towns of Janesville and Rock in the county of Rock shall constitute an assembly district, and shall elect one member of assembly."

And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 8, negative 52; for the vote see Appendix I, roll call 213].

Mr. Latham moved that the article be laid upon the table, which was agreed to. And a division having been called for, there were 25 in the affirmative and 19 in the negative.

Mr. Fitzgerald moved that the convention adjourn, which was disagreed to. And a division having been called for, there were 21 in the affirmative and 28 in the negative.

Mr. Larrabee by leave introduced the following resolution, to wit: "Resolved, That the following sections be a part of the constitution: 'Section —. All county officers whose election or appointment is not provided for by this constitution shall be elected by the electors of the respective counties or appointed by the boards of supervisors or other county authorities as the legislature shall direct. All city, town, and village officers whose election or appointment is not provided for by this constitution shall be elected by the electors of such cities, towns, and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for

by this constitution and all officers whose offices may hereafter be created by law shall be elected by the people or appointed as the legislature may direct.'

"Section —. The legislature may declare the cases in which any office shall be deemed vacant, where no provision is made for that purpose in this constitution."

Mr. Larrabee moved that the rules be suspended for the consideration of said resolution now, which was agreed to. The resolution was read the first and second times. The question was then put upon ordering the resolution to be engrossed and read the third time, and was decided in the affirmative.

No. 22 [21?], article on schedule, was then taken up. Mr. Rountree moved to amend the same by striking out in section 11, in third line, "Jefferson, Rock, and Green" and inserting "Washington, Sheboygan, Manitowoc, Calumet, Brown, and Fond du Lac"; by striking out in fourth and fifth lines "Washington, Sheboygan, Manitowoc, Calumet, Brown, and Fond du Lac" and inserting "Jefferson, Rock, and Green."

Mr. Rountree: Mr. President—I propose this amendment to the article now under consideration, believing, as I do, that the public good requires the division of the state into congressional districts by a north and south line, as near as may be. I propose by this amendment to comprise the counties of Racine, Walworth, Milwaukee, Waukesha, Washington, Sheboygan, Manitowoc, Brown, Calumet, and Fond du Lac in one congressional district and that the balance of the state shall comprise the other district. By this division the number of inhabitants is about equally divided, though the western district by this division will comprise much the larger portion of territory, which evil I think we shall have to submit to. I suppose it to be our duty in this case, as in all others which may arise, and upon which we are required to act, faithfully to discharge our duty to the people who sent us here; and entertaining this opinion, I do not see that gentlemen can differ with me in the plan I propose in this amendment.

I object to the division and districts as proposed in the article presented by the select committee upon that subject because it is unequal, partial, and unjust. And whether it is the product of accident or design, it is equally inexcusable and improper. Sir, I invite you and all the members of this convention to cast your eyes to the map of this state, which hangs near you upon the wall of this hall. There, sir, you will see that this article, as reported, proposes to form one congressional district out of seven small counties in the southeast corner of this state. Small, I mean, in territory, but large in population. Those counties are Milwaukee, Waukesha, Jefferson, Racine, Walworth, Rock, and Green. Those counties do not

lie in a square, nor are they united by common interests. These seven counties contain, as shown by the late census, a little less than one-half the population of the state; and by the map there, sir, it appears also that they comprise less than one-tenth part of the territory of this state; and the fact also appears that this said favored district contains but about one-third part of the established counties in the territory. This little favored district in the south-east corner of the state comprises some sixty miles of lake coast, with harbors partly improved, a well-settled and dense population, though, as I before stated, in no wise united by common or peculiar interests. Yet these particular counties must form one congressional district, while this liberal and public-spirited committee assigns to the other district some nineteen or twenty counties, extending over nine-tenths of the territory, containing a little the larger population, covering more than six hundred miles of lake coast, unimproved by harbors, covering the whole length of the Mississippi from the falls of St. Anthony down to the state line—a distance of some four or five hundred miles—and extending from the extreme northeastern corner of the state to the extreme southwestern—a distance of more than five hundred miles—and almost surrounding the little, compact seven-county district.

Now, sir, I would ask if this division is a fair and equitable one. Will the people of this territory approve such a division? I think not. I know, sir, that the people of the western portion of the territory do not wish or expect such a division of the state. And I here call upon western Democrats in this convention to come out and support my amendment, thereby supporting such a division as will be just and proper. I call upon all western and untrammelled and unprejudiced members to come up to their duty and prevent this gross injustice being perpetrated. I strongly suspect, sir, that this matter has been all arranged and settled, and we are doomed and compelled to suffer this gross injustice. I suspect it, sir, for the reason that during all the stages through which this article has passed in this convention—and this being the very last moment when an amendment to it would be in order—no member of the Democratic party in the majority upon this floor has so much as offered an amendment to this section of the article; whilst I know, too, that the provisions of the amendment I now propose are dear to a large portion of that party at home in the western portion of the territory as well as to the people generally. I ask, sir, how

western Democrats can reconcile the passage of this article without my amendment to their constituents without having it, at least, to say in their excuse, that they proposed to amend it and supported proper amendments. But, sir, if this question has been arranged and settled and the strong party screws have been applied so effectually as to prevent any inroads upon this most unjustifiable act, I must—and those who think with me must—submit. But while I do submit to this act of the party in the majority of this convention, I will herald my protest long and loud and hope it may reach every portion of the territory.

If the grand design to be accomplished by passing this article without my amendment is to ensure both the congressional districts to be Democratic, I think, sir, that this great injustice need not have been perpetrated to accomplish that object. For proof of my statement I will refer you to the delegation from a majority of the counties in either district upon this floor and to the recent elections held in the territory. And I will further say that you may take any four counties lying adjoining to each other, of the large class of counties in this territory, and unite them, and take the aggregate vote at any recent election held, and you will find it to be Democratic. This being the case, and each of the districts properly formed presenting a Democratic majority in the recent elections, what have you to fear on that score? I will suggest a probable fear which might be entertained, and that is that the western district would not present so heavy and decided a party majority as it would if the county of Washington and the other northeastern counties were embraced in the district; but, sir, I will ask honorable members, placed upon this floor to make a constitution for the good people of Wisconsin and not placed here to form Democratic districts, if such considerations are to find a lodgment in their thoughts and govern their acts upon this question. I think there was much force in the remarks made by the honorable gentleman from Lafayette a few days ago upon the subject of districting the state into representative districts. That gentleman then said that sparsely settled counties with few inhabitants and large territory should be properly regarded by the convention; that population should not in such cases be alone regarded; that territory should also be regarded in making the apportionment. And I was glad to see that rule adopted by the convention. I now ask gentlemen to

western Democrats can reconcile the passage of this article without my amendment to their constituents without having it at least to say in their excuse, that they proposed to amend it and supported proper amendments. But, sir, if this question has been arranged and settled and the strong party screws have been applied so effectually as to prevent any friends upon this most unjustifiable act, I must—and those who think with me must—submit. But while I do submit to this act of the party in the majority of this convention, I will herald my protest long and loud and hope it may reach every portion of the territory.

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permit the same rule to govern in the vote they are about to cast upon my amendment.

I have before stated that the division as made by the committee assigned about nine-tenths of the territory and a little more than half the population to one district—and that would certainly make it a very Democratic district—and the balance, seven small counties, to the other district. If the argument of the honorable member from Lafayette was good—and I believe the convention thought it was—in the case of representation in counties, it is equally good in forming districts and representation in Congress; and I call upon that gentleman with all others who entertain the same views to support this amendment. I wish gentlemen to come out upon this question. I shall call, before I take my seat, for the ayes and noes. I want this vote recorded, so that gentlemen may show their hands and refer their constituents to the journal of this convention to show how they voted upon the question of districting the state, when complaints may be made by the people that their representative in Congress has too large a district to represent and that he cannot from the circumstances of the case understand their wants and wishes. I think, Mr. President, that I shall not prove to be mistaken in the result of the vote that is about to be taken upon my amendment. I think, sir, that the profound silence that gentlemen belonging to the party in the majority in this convention have observed upon this subject cannot be misunderstood.

They shall, however, take the responsibility of rejecting it by a direct vote; they have the numbers and the power to do so, and upon them I throw the responsibility of doing it; and let it not be said hereafter, when the people shall rise in their majesty and condemn this provision in the constitution, that the subject escaped the notice of members and was engrafted unawares into the constitution. I do not mean to be understood as saying that I think this will be a sufficient cause for the people to reject the constitution or even to vote against it. No, sir, such is not my opinion. This instrument contains too many good provisions, in my judgment, and I hope it may be adopted. But, sir, I do say that, in my opinion, the very first opportunity that the people may have, they will correct this evil, and we shall look forward to the apportionment which is to be made under the United States census to be taken in 1850, with deep interest, for the correction of this great wrong.

Mr. Chase said he had not known till the gentleman from Grant informed him that members of Congress were intended to represent territory and not people. In the city of New York and other large cities they represented no territory at all. In the sparsely settled parts of the West the districts were almost of unlimited size. The gentleman ought to know that they are apportioned according to population wholly. Now though the two districts as proposed were very unequal in extent of territory, he did not doubt that the northern and western one, large as it was, contained great men enough to represent it adequately. He was well satisfied with the provision reported by the committee. He thought it was the true policy to district the state by a line running east and west, and that both representatives should have districts bordering on the lake, and thus be interested in commerce. This was the great interest of the state, which depended on the action of the general government, and this needed the special interest of our representatives. It had been found impracticable, however, so to divide the districts as to have both border on the lakes and extend back to the Mississippi. This was done as nearly as possible, and he thought it could not be improved.

Mr. Prentiss said that if the proposition of the gentleman from Grant were adopted, one of the districts would contain over 4,000 more people than the other. The difference between the districts as recommended by the committee was only 189.

Mr. O. Cole said he believed this proposed arrangement of the committee gave universal dissatisfaction in the west. The people there had always desired a division by a north and south line; and the Democratic party at the last election had instructed their candidates to go for such a division. They deemed this to be just and proper. Their interests and feelings were different from those of the eastern portion of the territory, and a representation from one could not represent the other.

Mr. Rountree said that the difference in population in the districts according to his proposition was explained by the fact that the first census of Grant County had given her over 3,000 less population than she had been subsequently found to contain. Taking her corrected census, the difference would be but little over 400. But the west asked nothing on the score of sparse population. They asked only that an equitable division of the state might be made—one which should more nearly equalize the territory, as well as the

population. There was no propriety in putting all the thickly settled part into one district and all the sparsely settled part into the other. The gentleman from Fond du Lac had said that both the districts should border on the lake so that both representatives might feel a special interest in commerce. He would like to know if the Mississippi country had no rights—if the interests of the lake shore only were to be consulted. But it was apparent to him that political considerations were the ones principally regarded in this proposed division. Gentlemen wanted to divide so as to secure two Democratic districts at all hazards. He would not argue the question further. They had the power, and could sacrifice the rights of the west if they chose, but they would be held accountable.

Mr. Judd spoke.

The question was then put upon the adoption of the same, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 23, negative 37; for the vote see Appendix I, roll call 214].

On [motion] of Mr. Reymert the convention adjourned.

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 2, resolution relative to apportionment and election of officers. Mr. Lewis, from the committee on that subject, reported an address to be submitted to the people with the constitution.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement, who were instructed to inquire into the expediency of amending the article legislative by adding thereto a section requiring the first legislature of the state to meet in joint ballot on the first Monday of the session and ballot for United States Senators, and if they fail to elect on that day they shall meet again on the succeeding Wednesday and ballot as above provided, until they shall elect such Senators, respectfully report that in view of the fourth section of the first article of the Constitution of the United States, the power of this convention to engraft the section contemplated in the instruction on the constitution is doubtful; that no power to enforce the provisions of such a section is or can be vested in any of the departments of the state government, is clear. Therefore, they deem it inexpedient to engraft such a section in the legislative article."

Resolutions were introduced as follows, to wit:

By Mr. Harrington: "Resolved, That Douglass Randall, doorkeeper to this convention, be paid only for the time which he served in person, and that

SATURDAY, JANUARY 29, 1848

Prayer by the Rev. Mr. Penman.

The reading of the journal of yesterday was dispensed with.

The President presented a petition from citizens of Dodge County, praying for the submission of the old constitution again to the votes of the people.

Mr. Vanderpoel moved that the same be laid upon the table, which was agreed to.

Mr. Larrabee presented a petition from citizens of Dodge County on the same subject, which was on his motion laid upon the table.

Mr. Wheeler presented the account of Messrs. Tenney, Smith and Holt for printing, which on his motion was referred to the committee on incidental expenses.

Mr. A. G. Cole introduced the following resolution, to wit: "*Resolved*, That the following resolution passed by this convention on the twenty-eighth instant be and the same is hereby rescinded: '*Resolved*, That each member be allowed double the number of papers containing the printed constitution at the time of the adjournment that is now authorized weekly by the convention.'" And on his motion the fifth rule was suspended for the adoption of said resolution now. The question was then put upon the adoption of the resolution, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 31, negative 28; for the vote see Appendix I, roll call 215].

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 9, resolution relative to apportionment and election of officers. Mr. Lewis, from the committee on that subject, reported an address to be submitted to the people with the constitution.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement, who were instructed to inquire into the expediency of amending the article legislative by adding thereto a section requiring the first legislature of the state to meet in joint ballot on the first Monday of the session and ballot for United States Senators, and if they fail to elect on that day they shall meet again on the succeeding Wednesday and ballot as above provided, until they shall elect such Senators, respectfully report that in view of the fourth section of the first article of the Constitution of the United States, the power of this convention to engraft the section contemplated in the instruction on the constitution is doubtful; that no power to enforce the provisions of such a section is or can be vested in any of the departments of the state government, is clear. Therefore, they deem it inexpedient to engraft such a section in the legislative article."

Resolutions were introduced as follows, to wit:

By Mr. Harrington: "*Resolved*, That Douglass Randall, doorkeeper to this convention, be paid only for the time which he served in person, and that

Abram Ogden be allowed and paid \$2.50 per day for the time which he has and may serve this convention in the above office."

By Mr. Case: "*Resolved*, That each member of this convention is hereby requested to furnish the committee on incidental expenses with a list and the number of newspapers ordered by them respectively, under a resolution of the convention to furnish papers for distribution." And the rule having been first suspended in relation to the last resolution, it was adopted.

By Mr. Chase: "*Resolved*, That at the same time when the votes shall be taken for the adoption or rejection of this constitution, a separate ballot may be given by every person qualified to vote for the adoption of this constitution, on which ballot shall be written or printed, or partly written and partly printed, the words following, to wit: 'Homestead Exemption—yes,' 'Homestead Exemption—no,' which ballot shall be received and deposited in a separate box, and counted, certified to, and returned in the same manner and at the same time as the votes for and against the adoption of this constitution. If by the return of said votes there shall appear to be a majority with 'Homestead Exemption—yes,' then the legislature at its first session after the adoption of this constitution shall provide by law for the separate registry and exemption from forced sale for any debt or liability contracted after the passage of said law, of a limited amount of land and the improvements thereon, the same being the homestead of any family or inhabitant of this state, and for such other property as they shall deem expedient."

By Mr. Lovell: "*Resolved*, That a select committee of three members be appointed to audit the account of Messrs. Tenney, Smith and Holt, for printing and binding 500 copies of the journal of this convention, at the usual rates paid by the legislature for similar work, and certify the same to the auditor, who is hereby instructed to issue his warrant upon the treasurer therefor as a part of the expenses of this convention."

Mr. Lovell moved that the fifth rule be suspended for the further consideration of said resolution now, which was agreed to.

Mr. Lovell remarked that the convention would adjourn before the journals and debates were completed, and it would be necessary to appoint a committee who would be here to audit the account.

Mr. Beall moved to amend the resolution by inserting after the word "appointed" the words "by ballot." And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 44, negative 16; for the vote see Appendix I, roll call 216].

Mr. Sanders understood the resolution to make it obligatory on the committee to audit the account at the rates paid for printing by the legislature. Under this understanding he was bound to oppose the resolution. This matter of printing was coming thicker and faster upon the convention. When the resolution authorizing the printing of the journals and sketches of debates by the *Argus*

office was adopted, they were told that the work could be done by that establishment more quickly and cheaply than by any other; and that the members would have the journals to carry home with them and distribute among their constituents. He wished the question of compensation settled by an aye and no vote, and not smothered up and thrown under the table. He called upon Mr. King and Mr. Harvey, who were experienced in printing, to say whether the work could not be done at forty cents per thousand for composition, and forty cents per token for presswork, and money made at it at those rates.

The morning hour having expired, Mr. Kinne moved a suspension of the rules, which was agreed to.

Mr. Whiton moved to amend the resolution by striking out the words "at the usual rates paid by the legislature for similar work."

Mr. Lovell said he had put the resolution in the present form so as to place the rate directly before the convention. If the majority of the convention were not willing to allow such rates for the work as the printers could live by, the latter would rather put their work on the same footing with the incidental printing and charge the convention nothing for it. The usual price paid for such work by the legislature was well known to be sixty-five cents per thousand, and sixty-five cents per token for presswork. There had been no intention to smother the matter. The question was whether the convention was willing to pay the usual price or some other.

In order to perform the work ordered by the convention, the printers had been obliged to employ reporters, which would not have been necessary if they were only making reports for their paper. In some way they should be compensated for this extra expense, as the work was ordered by the convention. In offering the resolution, he had no other object than to place the matter before the convention. Some price ought to be fixed for the work which was not yet completed, and the committee would be obliged to sit after the adjournment of the convention.

Mr. Judd spoke.

Mr. Chase said that the committee of which he was a member had called on Mr. Tenney last evening, and had inquired of him in what way the printing of the journals should be settled, and suggested that the matter should be left to some competent person. He replied that the price was already fixed, and if that price was

not paid it would cost the state ten times as much. Receiving that reply, the committee left.

Mr. Sanders said that he was convinced that forty cents per thousand was a living price. It would be recollected that when this matter was previously before the convention, gentlemen had advocated the resolution authorizing the printing of the journal and sketches of debates on the score of justice to the printers, who had agreed to perform the incidental printing for one cent. Now this same establishment had the audacity and effrontery to come here and ask for pay for printing the daily slips. When they had made their bid at one cent, they came out with an editorial stating that they had "struck a lead." It was true enough that they had done so, that the lead was now being exhibited to the convention.

When this subject was before them on a previous occasion, he had called upon the convention to refer it to the committee on incidental expenses and have them go to the office of the *Argus* and ascertain the rates at which the work could be done. This was declined by the convention. He thought then and still thought that the object of the particular friends of that press was to smother up the matter. There was a long tail to this whole business, which it would take a long time to wind up.

Mr. Gale said that when this matter was up before, it would be recollected that he had offered an amendment fixing the price for the work at forty cents per thousand and twenty dollars for the index. He had shown this amendment to Mr. Tenney, who had said that he would be satisfied with those rates, but would prefer that the matter should be left to the legislature.

The question was then put and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 45, negative 15; for the vote see Appendix I, roll call 217].

Mr. Kinne moved that the blank be filled by inserting: "at the rate of fifty cents per thousand ems for composition, and fifty cents per token for presswork."

Mr. Larrabee wished to vote understandingly on the subject and to pay the printers a just price. When Mr. Gale had moved the amendment to which that gentleman had just referred, he had voted for it. He was convinced that if the matter was left open, just such a difficulty would arise. The principle of law in such cases

was to give what should be ascertained to be a just and fair compensation. The gentleman from Walworth (Mr. Gale) had stated that he was authorized to say that the printers would be satisfied with forty cents per thousand for composition, and the same for presswork. If this statement was made by authority, he would feel himself compelled to vote for giving that price. When Mr. Gale's amendment was offered, one of the proprietors of the *Argus* office was in the hall, occupying a reporter's desk. He had made no opposition to it and had, in fact, given a silent consent. If forty cents was not a fair price, he wished to be informed what was. He was not a practical printer himself and wished some members of the convention who were, to make a statement on this subject. When this matter was up before, they had been told that the same matter could be transferred from the daily slips to the journal. Yet both were charged. He could not vote for this double charge. He would call upon Mr. Gale to say whether the remarks which he had made were by the authority of the printers. Mr. Gale stated that he had submitted his amendment fixing the rates at forty cents to Mr. Tenney at the time, and that he had expressed himself satisfied with it, though at the same time he had said that he had rather have the matter left open to the legislature.

Mr. Harvey moved to amend the amendment by striking out the word "fifty" in the first and second lines and inserting the word "forty."

Mr. Jackson said that in all the discussion which had thus far taken place on the subject of printing he had not yet said a word. Gentlemen had stated that the convention in their action on this subject had voted blindly. Perhaps this might be so, but if gentlemen would examine the journal of this convention they would find that he had studied economy in all his votes. When the resolution was passed giving to all the clerks of the convention a per diem of \$5.00, a motion was made to rescind it, and the gentleman from Dodge (Mr. Judd) was found moving to postpone all consideration of the motion. He was willing to give the clerks \$5.00 a day and was at the same time willing to allow the printers to work night and day for a mere nothing. He only alluded to this matter to show that the gentleman from Dodge (Mr. Judd) was actuated by some other motive than economy in the course which he took on this matter. He knew from the first that the journal must be printed and that the idea of letting out the printing to the lowest bidder

was a mere farce. Why were certain gentlemen so anxious to adopt this principle at the present time? In the last convention the same proposition was made, and the gentleman from Dodge (Mr. Judd) opposed it. Why did he do so? Because the printing could then be given to another press. Now, when it could not be given to that press, he (Mr. Judd) was anxious to let it out to the lowest bidder. Any way to avoid giving it to the *Argus*.

Gentlemen all knew that sixty-five cents was the usual price which had been paid for such work. He had himself talked to the printers on this subject, and they had said that they would take whatever price the convention should see fit to give them, even if they lost money by it. They trusted to the magnanimity of the convention. He presumed that when Mr. Tenney made the statement which he was said to have made to Mr. Gale he had this meaning and no more.

Mr. Larrabee said he had no doubt that the gentleman from Racine (Mr. Jackson) thought he had struck some pretty hard blows at his colleague from Dodge. The gentleman might act according to his own conscience, but he ought not to impute wrong motives to other gentlemen.

Mr. Chase thought this amendment would not help the matter. He hoped that all gentlemen on this floor would treat this subject dispassionately and coolly and as a mere business transaction. He would vote for giving a reasonable compensation if he could find out what that was. He did not believe these gentlemen would ask an unreasonable compensation. If forty cents was a reasonable compensation, he would vote for that; if fifty cents, for that; if sixty-five cents, for that. The work had been ordered by the convention. They had employed persons to perform it without agreeing on any price and were bound to pay for it a reasonable compensation. Nothing could be gained by referring the matter back to the committee and having it returned to them again. He hoped they would have the opinion of some practical printers, who would tell them what would be a reasonable compensation.

Mr. Harvey said that in all the arguments which had been used in favor of this claim for printing it had been urged that the printers were at an extra expense of \$5.00 per day for reporting. This extra expense was met by the charge for the papers. He would make a brief statement of facts in regard to this matter, not as a practical printer, but as one who had had charge of a printing office.

In this county solid matter could be printed for forty cents per thousand for composition, and the same for presswork, and a slight profit could be made—not sufficient, he acknowledged, to cover the loss arising from doing a large amount of work for nothing. But it was to be remembered that a large portion of the work done for the convention was what was technically called “fat” matter. If solid matter could be afforded at forty cents, this could be done for the same price and yield a handsome profit.

Mr. Lovell said that Mr. Judd had represented him as stating that if the printers could not get what they asked, they would take nothing. He had made no such statement, but had said that if the printers could not have a fair price allowed them they would prefer to take nothing. He was not himself able to say what would be a fair price, but it should be recollected that a higher rate should be allowed for printing done during the time of the session, where much of it was executed during the night and as connected with the reporting. He cared not whether this additional compensation was paid by an additional charge for composition and presswork or by a specific appropriation.

As regarded the course of the gentleman from Dodge (Mr. Judd) on this subject, it did not tally very consistently with his votes in the last convention. Mr. Lovell here pointed out from the journal of the last convention several instances wherein Mr. Judd had voted for giving the highest rates of compensation to Beriah Brown, their printer. The gentleman from Dodge had been remarkable for his economy on this matter of printing in this convention, because the boot was on the other leg. In looking over the journal of the last convention he observed that there were divers long reports made, to the printing of which objections had been raised on the score of expense. In every case that gentleman had voted for printing them. He also voted for printing twenty thousand copies of the constitution for distribution. Something had been said on this floor about “fat” work. If he understood what that meant, there were some precious specimens of it in the last journal. Yet, for all these the gentleman from Dodge had voted, and that, too, at the rate of sixty-five cents per thousand. Before that gentleman made any charges of inconsistency against other members of the convention, he should examine his own course and see whether it had been consistent through two conventions. If the members had any curiosity on this subject, they could look

into the journal of the last convention and satisfy themselves. He was in favor of paying a fair compensation for the work and did not believe that forty cents per thousand was a fair compensation. He did not think the convention would do justice to itself or to the printers if it should cut down the price below what was fair and reasonable.

Mr. Judd spoke.

Mr. Reed said that he had anticipated from the commencement of the session of the convention, when the printing question was first under consideration, that exactly this result would be brought about. He was satisfied when the plan was adopted of authorizing this printing without fixing a price, that they would meet with precisely this difficulty. He was aware that gentlemen who refused to pay a price which would be satisfactory and for which the work could be well done had an object in view. He was not disposed to put down the price of any man's labor. He had himself been connected with the craft as a practical printer. He did not believe in the propriety of letting out the printing to the lowest bidder. He believed that course would involve the convention in difficulty. He was sufficiently acquainted with the printing business to know that many means could be resorted to by which the convention might be deluded into giving larger prices than they had contemplated. He recollected a case where a certain individual succeeded in obtaining from the legislature precisely double the price to which he was entitled; and this would never have been known if he (Mr. Reed) had not been called upon to measure the work. The individual referred to received \$2.50 per thousand for composition, and the same for presswork. He did not think the convention was bound to cut down the price of public printing to what it might be done for under circumstances of extraordinary competition. He was willing to give a fair price but not an extravagant one for the purpose of giving tone to public sentiment, particularly when that tone was in his opinion on the wrong side of the question.

Mr. Fowler said that he had just been informed by Mr. Beriah Brown that forty cents for composition and presswork was a price at which money could be made. Mr. Kinne said this statement of Beriah Brown's might perhaps have been of some service if it had been made at an earlier period. He was decidedly opposed to making this a question to get up a fog upon. Taking everything in view, he did not believe that if ordinary printing could be done at

into the journal of the last convention and satisfy themselves. He was in favor of paying a fair compensation for the work and did not believe that forty cents per thousand was a fair compensation. He did not think the convention would be justice to itself or to the printers if it should cut down the price below what was fair and reasonable.

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forty cents, this, which had been done at extra charges and by working extra hours, could be done so cheap. A reasonable compensation ought to be allowed. If it was shown that printers had been paid too much heretofore, that was no reason why they should not be paid enough now. No one had said that this particular job could be executed for forty cents. He hoped gentlemen would not allow their votes on this subject to be governed by party feelings.

Mr. Harvey said that he had stated that this job could be done better for forty cents than other jobs which printers would be glad to get at that rate.

Mr. Beall spoke.

Mr. Lakin said that he was very much interested in this rich and splendid subject, which was more fruitful than any other which had been before the convention. They had begun with it and were likely to conclude with it. He could not but fancy himself in some justice's court, listening to the trial of some weighty cause of \$50. He had looked on with more amusement than anger, and the line of Virgil had been forcibly brought to his mind: "*Tantaene animis coelestibus irae!*" Gentlemen were just getting well into the subject, and he trusted they would interest the convention with it some time longer.

Mr. Jackson said that the quotation of the gentleman from Grant, coupled with his allusion to a justice's court, reminded him of a story he had once heard of a man who had recently received the dignified appointment of constable. The first process which was put into the hands of the new officer was one requiring to arrest a man for larceny. The culprit perceiving the approach of the constable fled into a swamp, and the officer pursued him, but finding himself unable to seize him he went back to the justice's office, and gravely made his return on the writ: "*In swampo, et non comestibus.*"

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 28, negative 33; for the vote see Appendix I, roll call 218].

Mr. Beall moved to amend the amendment by striking out the word "fifty" and inserting the word "forty-three," which was accepted by Mr. Kinne as a modification of his motion.

Mr. Jackson moved to amend the amendment by striking out the word "forty-three" and inserting the word "forty-five."

And the question having been put, it was decided in the negative. And

the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 15, negative 47; for the vote see Appendix I, roll call 219].

Mr. Folts moved to amend the amendment by striking out the word ["forty-three" and inserting the word] "fifty." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 25, negative 38; for the vote see Appendix I, roll call 220].

Mr. Lewis moved to amend the amendment by striking out the word "forty-three" and inserting the word "forty-seven," which was disagreed to. The question was then put upon the amendment as modified, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 36, negative 27; for the vote see Appendix I, roll call 221].

Mr. Gifford moved to amend the resolution by substituting therefor the following: "That this convention pay Tenney, Smith and Holt the same price that the last convention paid for similar work, and that a committee of three be appointed to inquire into the same." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 11, negative 57; for the vote see Appendix I, roll call 222].

Mr. Larkin moved that the convention take a recess until half past two o'clock P.M., which was disagreed to.

The question was then put upon the adoption of the resolution as amended, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 40, negative 22; for the vote see Appendix I, roll call 223].

Mr. Dunn moved that the convention proceed to ballot for the committee under said resolution, which was agreed to. Messrs. Chase and Vanderpoel were appointed tellers.

Mr. Chase moved that [the person having] the highest number of votes should be chairman of the committee, which was agreed to. The ballot having been taken and counted, the tellers reported that the whole number of votes given was 63, of which Mr. Featherstonhaugh received 34; Mr. Lovell 31; Mr. Judd 30; Mr. Secor 26; Mr. Case 23; Mr. Wheeler 21; Mr. King 7; Mr. Fox 3; Mr. Chase 2; Mr. Reed 2; Mr. Sanders 2; Mr. Whiton 1; Mr. Harvey 1; and Blank 2. The President decided that Mr. Featherstonhaugh having received the highest number of votes cast, was duly elected chairman.

Mr. Chase moved that the convention take a recess until half past two o'clock P.M., which was agreed to.

HALF PAST TWO O'CLOCK P.M.

Mr. Richardson reported as correctly engrossed No. 15, article on miscellaneous provisions.

Mr. Latham by leave introduced the following resolution, to wit: "Resolved, That the sum of \$200 be paid to Thomas McHugh, secretary, for preparing the journal for publication, distributing journals, and all other extra

services which have been or may be imposed upon him by this convention."

Mr. Rountree introduced the following resolution, to wit: "WHEREAS, The business of this convention has been nearly accomplished, and a few hours' time will be sufficient to perfect and finish all the unfinished business of the said convention; therefore *Resolved*, That the per diem pay of the members of this convention shall cease and determine on Monday, the thirty-first day of January instant, and the president and secretary of this convention are hereby directed to make out and sign certificates for the per diem of said members up to the thirty-first day of January, after which time per diem shall not be allowed or paid to any member of said convention."

Mr. Larrabee moved to amend the resolution by striking out "thirty-first day of January" and inserting "first day of February," which was agreed to. The resolution as amended was then adopted.

Mr. Dunn, from the committee on revision and arrangement, made the following report:

"The committee on revision and arrangement respectfully report the article on executive with the additional section ordered to be added by this convention made a part of section 4 of the original article; also, the resolution relative to public lands and lands in the Fox and Wisconsin River grants, with corrections and suggestions, in which they ask the concurrence of this convention."

RESOLUTION RELATIVE TO THE FOX AND WISCONSIN RIVER GRANT

"Strike out third resolution and title.

"Suggest that the resolutions stand as fifth and sixth of the resolutions relative to public lands.

"Title."

RESOLUTION RELATIVE TO PUBLIC LANDS

"Resolution 1. In eighth and ninth lines strike out 'the proceeds of so much thereof as shall have been sold by the territory of Wisconsin,' and insert 'remaining unsold.'

"Resolution 3. Strike out in third, fourth, and fifth lines the words 'at the minimum price and subject to the same rights of preëmption to occupants as the public lands of the United States are now sold,' and insert 'as other school lands.' Also insert 'Provided, That the same rights of preëmption as are now granted by the laws of the United States shall be secured to persons who may be actually settled upon such lands at the time of the adoption of the constitution.'

"*Resolved*, That the committee on revision be instructed so to alter the resolutions relative to public lands as to strike out in the seventh and eighth lines, first resolution, the words 'the proceeds of so much thereof as shall have been sold by the territory of Wisconsin' and insert 'remaining unsold'; and so to amend the second resolution as to provide that in case the odd-numbered sections shall be granted to the state as part of the school fund, such lands shall be sold in the same manner as other school lands: *Provided*, That all persons who are now or may be settled on any of the said odd sections at the

time of the adoption of this constitution shall be entitled to preëmption as on lands belonging to the general government."

The amendments reported by the committee on revision were severally concurred in.

No. 9, resolution relative to election and appointment of officers, was then taken up and read the third time. The question was then put upon the passage of the resolution, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 54, negative 3; for the vote see Appendix I, roll call 224].

No. 15, article on miscellaneous provisions, was then taken up and read the third time, when Mr. Whiton moved that the article be referred to the committee on engrossment, which was agreed to.

No. 22, article on districting representatives, was then taken up.

Mr. Latham moved to amend the article by striking out all that portion which relates to the formation of assembly districts in the county of Walworth and inserting as follows:

The towns of Troy, East Troy, and Spring Prairie in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Whitewater, Richmond, and La Grange in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Geneva, Hudson, and Bloomfield in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Darien, Sharon, Walworth, and Linn in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

The towns of Delavan, Sugar Creek, Lafayette, and Elkhorn in the county of Walworth shall constitute an assembly district and shall elect one member of assembly.

Mr. Chase moved to amend the article by striking out the words "New Lisbon" and inserting the words "New Berlin," which was agreed to.

Mr. A. G. Cole moved to amend the article as follows: Amend as to the county of Racine:

First. The towns of Burlington, Wheatland, and Salem in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Brighton, Bristol, Paris, and Pike in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Southport and Pleasant Prairie in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Racine and Mount Pleasant in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

The towns of Rochester, Norway, Yorkville, Raymond, and Caledonia in the county of Racine shall constitute an election district and shall be entitled to elect one member of assembly.

Second. The towns of Burlington, Wheatland, Salem, Brighton, Bristol, Paris, Pike, Southport, and Pleasant Prairie in the county of Racine shall constitute the sixteenth senate district and shall elect one senator.

The towns of Racine, Mount Pleasant, Rochester, Norway, Yorkville, Raymond, and Caledonia in the county of Racine shall constitute the seventeenth ["seventh" in MS] senate district and shall elect one senator.

And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 13, negative 31; for the vote see Appendix I, roll call 225].

Mr. Larrabee moved a reconsideration of the vote taken yesterday adopting the proviso of Mr. Chase to the article relative to adding towns hereafter to be organized to adjoining districts. And the question having been put, it was decided in the negative.

Mr. Biggs moved to amend the article by striking out the words as follows: "The precincts of Benton, Elk Grove, Belmont, Willow Springs, Prairie, and that part of Shullsburg precinct north of town one in the county of Lafayette shall constitute an assembly district and shall elect one member of assembly. The precincts of Wiota, Wayne, Gratiot, White Oak Springs, Fever River, and that part of Shullsburg precinct south of town two in the county of Lafayette shall constitute an assembly district and shall elect one member of assembly," and inserting: "The precincts of White Oak Springs, Fever River, Benton, Elk Grove, and Belmont shall constitute an assembly district and shall elect one member of assembly. The precincts of Shullsburg, Gratiot, Wayne, Wiota, Prairie, and Willow Springs shall constitute one assembly district and shall elect one member of assembly." And the question having been put, it was decided in the negative.

The question was then put upon ordering the article to be engrossed and read the third time, and was decided in the affirmative. Mr. Larkin moved that the rule requiring the article to be engrossed be suspended, which was agreed to. The article was then read the third time. And the question having been put upon the passage of the article, it was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 57, negative 10; for the vote see Appendix I, roll call 226].

[No. 21, schedule, was then taken up.] And the rules having been suspended, it was read by its title. The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 45, negative 12; for the vote see Appendix I, roll call 227].

The resolution accompanying report No. 1, of the committee on incidental expenses, of January 28, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 2, introduced by Mr. Beall yesterday, was taken up. And the rule having been suspended for the consideration of said resolution, Mr. Gale moved to amend the resolution so that the editor of the *Volksfreund* be authorized to translate, publish, and distribute 5,000 extra copies.

Mr. Jackson said he knew but little of the *Volksfreund*. He had seen but one number of it, which he held in his hand. It contained a short article (which he begged leave to read) published in the English language, which was a severe stricture upon him for offering a proviso to the suffrage article requiring persons of foreign birth to complete their naturalization papers after a residence of six years or lose the privilege of the elective franchise. While the amendment proposed by Judge Dunn to the suffrage article was under consideration, much fear was entertained that that amendment or something similar might prevail. The proviso which he offered was written by Mr. Kilbourn, who added one year to the time specified. At the suggestion of Mr. Doran several members of that body, of foreign birth, saw it after it was written and approved of it as a compromise, and he did so himself. He alluded to Messrs. Fitzgerald, Fox, Fagan, Schoeffler, and others who had shown a deep interest here for their foreign brethren. Shortly after he offered it the convention adjourned without taking the question. He had intended to renew it the next morning, but after a consultation with the gentlemen before named, at their request he concluded not to do so. All these gentlemen would bear him witness that he had been liberal and fair towards the foreign population of the territory. The editor of this paper undoubtedly labored under a mistaken idea of the matter, and he did not attribute to him any intention of misrepresenting him. If it was thought best to have an extra number of the constitution printed in the German language, he would vote to give a proper share to the publisher of that paper.

The amendment was disagreed to. And a division having been called for, there were 15 in the affirmative and 18 in the negative.

Mr. Beall moved to amend the resolution by striking out all after the preamble and inserting the following, viz.: "*Resolved*, That the publisher of the *Nordlyset*, J. D. Reymert Esq., hereby is authorized and requested to translate the constitution into the Norwegian language and to distribute 4,000 extra

copies of his paper among the Norwegian residents in such manner as may be deemed expedient.

"*Resolved*, That the president of this convention shall contract with those publishers and issue his certificate to them, and the treasurer of the territory is authorized to pay the amount of the same as a part of the incidental expenses of the convention."

Mr. Gale moved to amend the amendment by inserting after the first resolution as follows: "The editor of the *Volksfreund* is authorized to translate, publish, and distribute 4,000 ["6,000" in MS] extra copies." And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 41, negative 18; for the vote see Appendix I, roll call 228].

Mr. Lovell moved to amend the amendment by substituting the following, to wit: "*Resolved*, That the president of the convention be and he is hereby authorized to contract with the publishers of the newspapers of the territory not printed in the English language, to translate the constitution into the languages in which such newspapers are respectively printed, and that the sum contracted to be paid shall be paid out of the territorial treasury on the certificate of the president of the convention." And the question having been put upon the adoption of the same, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 50, negative 7; for the vote see Appendix I, roll call 229].

Mr. Judd moved that the preamble be stricken out, which was agreed to.

The question was then put upon the adoption of the resolution, and was decided in the affirmative.

The address was then taken up, when Mr. A. G. Cole moved that the address be referred to the committee on revision and arrangement, which was disagreed to. Mr. Castleman moved that the consideration of the address be indefinitely postponed, which was disagreed to. The question was then put upon the adoption of the address, and was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 42, negative 18; for the vote see Appendix I, roll call 230].

Mr. Richardson, from the committee on engrossment, reported as correctly engrossed No. 15, article on miscellaneous provisions. Mr. McClellan moved that the article be recommitted to the committee with instructions to amend the same by striking out sections 7 and 8.

Mr. Larrabee called for a division of the question. The question was then put upon recommitting, and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 20, negative 40; for the vote see Appendix I, roll call 231].

The question was then put upon the passage of the article, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 42, negative 20; for the vote see Appendix I, roll call 232].

Mr. Whiton moved that the rules be suspended for the consideration of resolutions now, which was agreed to.

Resolution No. 5, introduced by Mr. Chase this morning, relative to homestead exemption, was then taken up. And the question having been put upon the adoption of the same, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 12, negative 45; for the vote see Appendix I, roll call 233].

Resolution No. 2, introduced by Mr. Harrington this morning, was then taken up. And the question having been put upon the adoption of the same, it was decided in the affirmative.

Resolution No. 6, introduced by Mr. Latham this morning, was then taken up, when Mr. Case moved that the same be referred to the committee on expenses, which was agreed to.

Mr. Featherstonhaugh introduced the following resolution, to wit: "*Resolved*, That the committee on revision and arrangement be instructed to amend the article miscellaneous provisions by striking out section 5 and inserting the following, to wit: 'All persons residing upon Indian lands within any county of this state and qualified to exercise the right of suffrage under this constitution shall be entitled to vote at the polls which may be held nearest their residence for state, United States, and county officers.'"

Mr. Sanders moved that the convention adjourn until ten o'clock on Monday morning. And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 16, negative 39; for the vote see Appendix I, roll call 234].

Mr. Chase moved that Messrs. Lovell and Judd, having received the next highest number of votes on the first balloting for the committee on printing, be declared duly elected, which was disagreed to.

The President presented a communication from Messrs. Tenney, Smith and Holt, which was read. Mr. Beall moved that the communication be laid upon the table, which was disagreed to. Mr. Chase moved that the communication be referred to a select committee of three, which was agreed to. Messrs. Chase, King, and Bishop were appointed said committee.

(The substance of the communication was a peremptory refusal to accept of forty-three cents per thousand ems as the compensation for printing the journal and debates as voted by the convention. The communication being referred to a committee who did not report thereon, the reporter has not been able to obtain a copy for publication.—Reporter.)

Mr. Dunn moved that so much of the resolution adopted this morning as requires the appointment of the printing committee by ballot be rescinded, and that the convention appoint the committee viva voce, which was agreed to.

Mr. Beall moved that the convention now proceed to appoint said committee, which was agreed to.

The convention then proceeded to vote, and the votes having been counted, the secretary reported the whole number of votes given 60, of which Mr. Judd received 30; Mr. Lovell 26; Mr. Reed 21; Mr. King 16; Mr. Chase ["Case" in MS] 8; Mr. Wheeler 2; Mr. Secor 2; Mr. Fox 2; Mr. Lyman 1; Mr. Castleman 1; Mr. Hollenbeck 1; Mr. Sanders 1; Mr. Doran 1; Mr. Davenport 1; Mr. Jackson 1; Whig and Tadpole 1. There being no choice, the convention proceeded to vote the third time, and the votes having been counted the sec-

retary reported the whole number of votes given 60, of which Mr. Reed received 51; Mr. Lovell 43; Mr. Judd 23; Mr. King 4; and Mr. Case 2. Messrs. Reed and Lovell having received a majority of all the votes given were declared duly elected.

Mr. Harvey asked and obtained leave to make a personal explanation. He said that in the discussion in the forenoon he had stated that the proprietors of the *Wisconsin Argus* had charged the convention with the cost of the new type, etc., which they had purchased to print the journals with. The item in which he had supposed that charge to be included had since been explained to him to apply wholly to other matters, which were legitimate and proper charges. He therefore deemed it due, as well to himself as to the proprietors of the *Argus*, to make this explanation to the convention.

On motion of Mr. O. Cole the convention adjourned until half past eight o'clock on Monday morning.

C. W. Ellis	10.50
Alden and Gratton	4.55
E. B. and F. A. Utter	3.75
E. A. Cooley	3.75
Edward Riles	21.50
H. A. Wright	3.75
George Hyer	14.50
J. M. Goodhue	3.75
L. Lorch	2.00
George W. Crabb	2.10
	\$1,022.00

"The following note is appended to the bill of Messrs. Tenney, Smith and Holt, to wit: 'In addition to the above we have furnished members with 1,400 copies extra of our tri-weekly . . . \$50.00'; which account the committee report against allowing the same and in favor of giving them leave to withdraw the same. Also, in favor of allowing the account of Berish Brown for incidental printing, by direction of the convention, at \$24.50.

"Resolved, That the president and secretary of this convention are hereby authorized to issue certificates to the persons above named for the several sums herein stated respectively.

ALBERT FOWLER
E. B. CASE
T. BRON
E. P. HOLLANDER

"The committee on incidental expenses, to whom was referred the following resolution, to wit: 'Resolved, That the sum of \$500 be paid to Thomas McHugh, secretary, for preparing the journal for publication, distributing

MONDAY, JANUARY 31, 1848

Prayer by the Rev. Mr. Lord.

Mr. Vanderpoel moved that the reading of the journal be dispensed with, which was agreed to.

Mr. Fowler, from the committee on incidental expenses, made the following report:

"The committee on incidental expenses report in favor of allowing the following accounts for newspapers furnished members by order of the convention, to wit:

W. W. Wyman	\$460.70
Tenney, Smith and Holt	690.91
Beriah Brown	365.35
Moritz Schoeffler	69.65
J. D. Reymert	30.80
Wilson and King	48.93
Cramer and Curtis	32.52
C. L. Sholes	24.15
W. Mygatt	10.50
Bunner and Stafford	17.25
G. W. Bliss	10.50
Alden and Gratten	4.55
E. R. and F. A. Utter	3.75
E. A. Cooley	3.75
Edward Bliss	23.80
H. A. Wright	8.75
George Hyer	14.35
J. M. Goodhue	3.75
L. Leech	2.00
George W. Crabb	2.10

\$1,823.06

"The following note is appended to the bill of Messrs. Tenney, Smith and Holt, to wit: 'In addition to the above we have furnished members with 1,420 copies extra of our tri-weekly . . . \$60.60'; which account the committee report against allowing the same and in favor of giving them leave to withdraw the same. Also, in favor of allowing the account of Beriah Brown for incidental printing, by direction of the convention, at \$24.95.

"Resolved, That the president and secretary of this convention are hereby authorized to issue certificates to the persons above named for the several sums herein stated respectively.

ALBERT FOWLER

S. S. CASE

T. SECOR

S. P. HOLLENBECK

"The committee on incidental expenses, to whom was referred the following resolution, to wit: 'Resolved, That the sum of \$200 be paid to Thomas McHugh, secretary, for preparing the journal for publication, distributing

journals, and all other extra services which have been or may be imposed upon him by this convention,' recommend the adoption of the following resolution as their report:

"*Resolved*, That the sum of \$100 be paid to Thomas McHugh, in full for all services that have been or may be required of him as secretary of this convention, after it shall have adjourned.'

A. FOWLER
S. S. CASE
T. SECOR
S. P. HOLLENBECK"

Mr. Fenton introduced the following resolution, to wit: "*Resolved*, That the Rev. Messrs. Lord, Penman, and Read be allowed \$50 each for services as chaplains of this convention." And the fifth rule having been first suspended for that purpose, said resolution was adopted.

Resolution No. 4, introduced by Mr. O'Connor on the twenty-eighth instant, was then taken up. Mr. O'Connor moved that the same be laid upon the table, which was agreed to.

Mr. Chase introduced the following resolution, to wit: "WHEREAS, The journal of this convention cannot be completed before the close of the session, and the work, therefore, cannot be examined and its style and workmanship ascertained; and WHEREAS, There is a great variety of opinion concerning the value of the work; therefore *Resolved*, That all orders and resolutions respecting the pay, auditing the accounts, or fixing a price for printing, stitching, and binding, or for press or other work, in the journal of this convention, be and the same are hereby rescinded, and Messrs. Tenney, Smith and Holt requested to present their account for said work to the legislature for a compensation.

W. CHASE, Chairman"

Mr. Secor moved a reconsideration of the vote taken on Saturday, the twenty-ninth instant, on the passage of the article on miscellaneous provisions.

Mr. Lovell observed that the principal object of reconsideration was to strike out all that portion of the article which related to the division of counties and the location of county seats.

Mr. Larrabee was aware that there was much difference of opinion on this subject. If the matter were left with the legislature, it would be in the power of interested persons to logroll a question of divisions of counties through the legislature. Legislatures always went into extremes and would be very apt to reduce the limits of counties too much, which produced a great additional burden to the people. This had been found to be the case particularly in Illinois. A county thirty miles square was quite small enough. He thought, too, that if the matter were left with the legislature it would cost

the state more in legislating upon it than it could possibly do if left to the people of the counties. He was of opinion that the inhabitants of the counties had a clear right to locate their own county seats; and when they had settled this matter by a vote all must be satisfied, for all would have an equal voice. If the divisions of counties was left to the legislature, new counties might be erected to carry out some particular views of some particular legislature, and the citizens of the new county would be involved in the expense of erecting county buildings and supporting county courts.

Mr. Sanders had but one word to say. So far as his immediate constituents were concerned, it was against their interests to have their county divided. As a matter of principle he would vote for reconsideration. He held that whenever people could not live in harmony together they had a right to separate.

Mr. Martin said (Mr. King being in the chair) he was in favor of reconsideration for other and weightier reasons than those which had been advanced. Some of the counties at the north, which were but little settled but were rapidly increasing in population, were of a very inconvenient size. The county of Brown contained over one hundred square miles [*sic*]. Richland and Portage were large enough to make half a dozen counties. To say that these counties could not be divided without submitting the matter to a vote of the people was ridiculous. If the motion to reconsider should prevail, he would submit a resolution to recommit with instructions to report an amendment requiring that counties should not be so divided as to reduce their limits to less than thirty miles square.

Mr. Gale said that if the only object of recommitment was to obtain an amendment such as that proposed by Mr. Martin, he would not object; but he thought that would hardly meet the object of the gentleman who had moved to reconsider.

Mr. Reed was in favor of reconsideration for the reasons assigned by Mr. Martin and for other reasons. Take as an example the county of Brown. Suppose that one portion of that county containing a population of 2,000 persons wished to be organized into a new county. Green Bay, with a population of 3,000, might oppose and could prevent this; yet the people at Green Bay might not be proper judges of what would be for the interest of the people at the other extremity of the county. He considered the consideration of these matters as coming in the province of legislation. The legislature were elected to attend to these matters as well as others.

The gentleman from Walworth (Mr. Gale) had said his county was all right as it stood. So he (Mr. Reed) could say of his own. But if the present article had been in force heretofore, what would have become of Waukesha and Jefferson?

Mr. Judd spoke.

Mr. Chase was opposed to Mr. Lovell's amendment. He thought thirty miles square was a small enough area for a county. The amendment if adopted would produce incessant efforts to cut up counties.

Mr. A. G. Cole moved a call of the convention, which was ordered, and Messrs. Estabrook, Featherstonhaugh, Harvey, and Gifford reported as absent. Messrs. Gifford and Nichols were excused from their attendance.

Mr. Kinne moved that Mr. Featherstonhaugh be excused from his attendance, which was disagreed to.

Mr. Chase moved that all further proceedings under the call be dispensed with, which was agreed to. The question was then put and was decided in the affirmative. And the ayes and noes having been called for [and ordered], those who voted in the affirmative were [affirmative 42, negative 20; for the vote see Appendix I, roll call 235].

Mr. Martin moved that the article be referred to the committee on revision and arrangement with instructions to report an amendment as follows: "That no county shall be divided unless such county shall contain an area of thirty miles square, without the same being submitted to a vote of the people of such county, and a majority of the people of the county voting on the subject shall vote for such division."

Mr. Lovell moved to amend the instructions by striking out the word "thirty" and inserting the word "twenty-four."

Mr. Lovell said that the proposition seemed to have been made for the especial convenience of the county of Dodge, all the opposition to a smaller limit of the area of counties appearing to come from that quarter. A tract of land consisting of twenty-five townships was a very convenient size for a county, and a board of twenty-five supervisors would be a very convenient number. There were many counties in other states less than thirty miles square. In the erection of new counties in a new state, they were necessarily set off larger at first than they should remain.

Mr. Judd made some remarks.

Mr. Estabrook was opposed to the amendment, because he was opposed to the whole thing. He believed the section in the article relating to this matter had its origin in private interest. He believed it would tend to embarrass legislation, and for some years after the commencement of a state government the legislature

would find it necessary to have a standing committee on county seats and lines. The article would tend to array a host in opposition to the constitution.

Mr. Larrabee considered it his duty to make a few remarks to repel the insinuations of sectional and private motives which had been made by the gentlemen from Racine and Walworth (Messrs. Lovell and Estabrook). The gentleman who had last spoken had charged that he (Mr. Larrabee) was influenced in this matter by interested motives. He was himself inclined to doubt the character and envied not the heart of a man who could make such a charge. During the last fall he (Mr. Larrabee) happened to be in Chicago and there met a gentleman who had been a member of the constitutional convention of Illinois. That gentleman had pointed out to him an amendment to the constitution of that state similar to the one now proposed by the article. As far as his own interest was concerned, his own pecuniary advantages would not be enhanced by the course proposed by the article.

The question was then put and was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 18, negative 44; for the vote see Appendix I, roll call 236].

Mr. Lovell moved the following as a substitute for the instructions: "Amend the article by striking out the section relating to the division of counties." And the question having been put, it was decided in the negative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 22, negative 37; for the vote see Appendix I, roll call 237].

The question was then put upon referring with instructions, and was decided in the affirmative.

The President presented a communication from the secretary of the territory containing returns of the census of St. Croix County.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the articles on eminent domain and property of the state, [schedule, districting members of the legislature,] and apportionment of representatives, with corrections and suggestions, in which they ask the concurrence of the convention.

SCHEDULE

"Section 3. Strike out 'occur' in the third line and insert 'enure.'

"Section 4. Strike out 'over' in fourth and eighth lines; also in last line but five of the amendment substitute 'such' for 'said,' and in last line but one

'such' for 'the said.' Add to the amendment the words 'and all penalties incurred shall remain the same as if this constitution had not been adopted.'

"Section 8. Strike out all after 'United States' in the eleventh line to 'laid' in last line but one and insert 'to be'; and strike out 'fair' in second line, same section.

"Section 13. In the second line substitute 'force' for 'use'; and strike out in first and second lines the words 'have heretofore been' and insert 'are now.' In third and fourth lines strike out the words 'and the statute laws which may be in force.' Also, after 'returns' insert 'for state officers and members of Congress.'

"Section 14. Such parts of the common law as are now in force in the territory of Wisconsin, not inconsistent with this constitution, shall be and continue part of the law of this state until altered or suspended by the legislature.

"Section 14 [sic]. The senators first elected in the even-numbered senate districts, the governor, lieutenant governor, and the state officers first elected under this constitution shall enter upon the duties of their respective offices on the first Monday of June next and shall continue in office one year from the first Monday of January next. The senators first elected in the odd-numbered senate districts and the members of the assembly first elected shall enter upon their duties, respectively, on the first Monday of June next and shall continue in office until the first Monday in January next.

"Section 15. The oaths of office may be administered by any judge or justice of the peace, until the legislature shall otherwise direct.

"Suggest the following addition after proviso in twelfth section: 'The returns of election of senators and members of assembly shall be transmitted to the clerk of the board of supervisors or county commissioners, as the case may be, and the votes shall be canvassed and certificates of election issued, as now provided by law. In the first senatorial district the returns of the election for senator shall be made to the proper officer in the county of Brown; in the second senate district, to the proper officer in the county of Columbia; in the third senate district, to the proper officer in the county of Crawford; in the fourth senate district, to the proper officer in the county of Fond du Lac; and in the fifth senate district to the proper officer in the county of Iowa.'"

DISTRICTING ARTICLE

"In the third line substitute for 'as follows,' 'as hereinafter mentioned,' and add 'and each district shall be entitled to elect one senator or member of assembly, as the case may be'; and strike out 'and shall elect one senator' and also 'and shall elect one member of assembly,' wherever they occur.

"Suggest striking out 'apportionment article' and inserting 'districting article' next after section 11 of schedule. Also, alter proviso so as to read, 'The foregoing districts are subject, however, so to be altered as that when any new town shall be organized it may be added to either of the adjoining assembly districts.'"

The amendments were then severally concurred in.

Mr. Lovell moved that the article apportionment of representatives be laid upon the table, which was agreed to.

Mr. Root introduced the following resolution to wit:

CONSTITUTIONAL CONVENTION

To Daniel N. Johnson, Dr.

For sketching designs for coat of arms\$5.00

MADISON, January 30, 1848.

"Resolved, That the foregoing account be allowed and a certificate issued by the president and secretary therefore."

And the rules having first been suspended for that purpose, said resolution was adopted.

The rules were then suspended for the consideration of report and resolution introduced by Mr. Fowler of the committee on incidental expenses.

Mr. Case moved to amend the report so as to read:

W. W. Wyman	\$600.62
Tenney, Smith and Holt	830.04
Beriah Brown	432.42

And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 33, negative 24; for the vote see Appendix I, roll call 238].

The question was then put upon the adoption of the resolution, and was decided in the affirmative.

On motion of Mr. Larrabee the convention took a recess until half past two o'clock P.M.

HALF PAST TWO O'CLOCK P.M.

Resolution No. 4, introduced by Mr. Chase this morning, was then taken up. Mr. Chase moved to lay the same upon the table. And the question having been put, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 35, negative 18; for the vote see Appendix I, roll call 239].

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the article miscellaneous provisions and the address, with corrections and suggestions, in which they ask the concurrence of the convention:

"Separate article to apportionment and election of officers.

"Section 2. Insert after 'vacant' in second line 'and also the manner of filling the vacancy.'

Mr. Lovell moved that the article appointment of representatives be laid upon the table, which was agreed to.

Mr. Root introduced the following resolution in reply:

CONSTITUTIONAL CONVENTION

To Daniel M. Johnson, Jr.

For sketching designs for coat of arms \$5.00

Madison, January 30, 1862.

"Resolved, That the foregoing account be allowed and a certificate issued by the president and secretary thereon."

And the rules having first been suspended for that purpose, said resolution was adopted.

The rules were then suspended for the consideration of report and resolution introduced by Mr. Fowler of the committee on incidental expenses.

Mr. Case moved to amend the report so as to read:

W. W. Wyman \$600.00
Tennant, Smith and Holt 820.04
Beriah Brown 421.62

And the question having been put it was decided in the affirmative. And the yeas and nays having been called for and ordered, those who voted in the affirmative were [affirmative 33; negative 24] for the vote see Appendix I, roll call 238.

The question was then put upon the adoption of the resolution, and was decided in the affirmative.

On motion of Mr. Fairbanks the convention took a recess until half past two o'clock.

HALF PAST TWO O'CLOCK P.M.

Resolution No. 4 introduced by Mr. Chase this morning was then taken up. Mr. Chase moved to lay the same upon the table. And the question having been put it was decided in the affirmative. And the yeas and nays having been called for and ordered, those who voted in the affirmative were [affirmative 35; negative 18] for the vote see Appendix I, roll call 239.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the article miscellaneous provisions and the address, with corrections and suggestions, in which they ask the concurrence of the convention.

"Separate article to apportionment and election of officers.

"Section 2. Insert after 'vacant' in second line and also the manner of filling the vacancy."

"And suggest that these be added to the article on miscellaneous provisions. (The amendments were then severally concurred in.)

"The committee also report against the adoption of the address."

And the question having been put upon concurring in the report of the committee, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 34, negative 19; for the vote see Appendix I, roll call 240].

Mr. Beall introduced the following resolution, to wit: "*Resolved*, That there be allowed to the President of this convention in addition to his per diem the sum of \$2.50 per day during the sitting of the same." And the rule having first been suspended for that purpose, said resolution was adopted.

Mr. Fowler, from the committee on incidental expenses, made the following report, to wit:

Convention

to Tenney, Smith and Holt, Dr.

To 1,495 extra copies *Argus*, furnished members, as follows:

For 69 copies tri-weekly, 20 times	1,380
For 50 copies to Mr. Featherstonhaugh	50
For 15 copies to Mr. Gifford	15
For 38 copies to Mr. Reed	38
For 12 copies to Mr. Root	12

Total number of extra copies furnished members1,495
4

\$59.80

Note.—In addition to the above we have supplied [at least] hundreds of copies of our paper, of which we have kept no account and present no charge.

"The committee to whom was referred the above account report the individual members charged with papers stated to the committee that they would pay for the same if they had them, and that the 1,380 copies above charged have been distributed to all the members during the last twenty days, and that in the opinion of the committee it was a distribution for which neither party expected any charge. They therefore report against allowing the same.

A. FOWLER, Chairman"

And the question having been put upon the adoption of the report, it was decided in the affirmative. And the ayes and noes having been called for and ordered, those who voted in the affirmative were [affirmative 36, negative 24; for the vote see Appendix I, roll call 241].

Mr. Fowler introduced the following resolution, to wit: "*Resolved*, That there be allowed to David Holt, Jr. the sum of \$1,491.33 for postage ordered by a resolution of this convention, and that the president and secretary issue their certificate for the same." And the rule having first been suspended for that purpose, said resolution was adopted.

Mr. Case presented the account of Messrs. Tenney, Smith and Holt and moved that the same be referred to the committee on incidental expenses, which was agreed to.

Mr. Fowler, from the committee on incidental expenses, made the following report, to wit:

"The committee on incidental expenses, to whom was referred the account of Messrs. Tenney, Smith and Holt for incidental printing, report in favor of allowing the contract price for such printing, including the materials for the same, at one cent.

"Also in favor of allowing their account for printing the daily journal slips, at \$207.96, for the reason that in the opinion of the committee such printing is unusual in parliamentary bodies and therefore a proper extra charge.

"The balance of the account, being for materials furnished for the incidental printing and for the journals proper, a committee having been charged with the settlement of their account for printing and binding the journals, and materials for the same, and the materials furnished for the incidental printing, is included in their contract to do the incidental printing for one cent, and therefore not being an equitable charge the committee recommended that they have leave to withdraw that part of their account.

"Respectfully submitted,

A. FOWLER
S. S. CASE
T. SECOR"

The question was then put upon the adoption of the report and was decided in the affirmative.

[Mr. Judd: Mr. President—I cannot allow the present resolution to pass without saying a few words. This he did with great reluctance being well advised of a very pertinent remark to be found in the poem of *Hudibras* (the special friend of the gentleman from Grant, Mr. O. Cole) if he recollected right—for it was more than thirty years since he had read it). The remark to which he alluded was in these words:

That man is sure to lose
Who fouls his hands with dirty foes.

If he could have profited by this wholesome admonition consistent with his duty, he would most cheerfully have done so; but, inasmuch as he could not, as a matter of duty he would proceed to submit a few observations.

Sir, said Mr. Judd, when the proposition was first made to elect a printer to the convention, he had with many of the gentlemen constituting a majority of the convention refused to unite in such election for the reason that he preferred to let the printing by contract to the "lowest bidder." This course was adopted by order of

Mr. Fowler, from the committee on incidental expenses, made the following report to wit:

"The committee on incidental expenses, to whom was referred the account of Messrs. Tenney, Smith and Holt for incidental printing report in favor of allowing the contract price for such printing, including the materials for the same, at one cent.

"Also in favor of allowing their account for printing the daily journal, at \$207.88, for the reason that in the opinion of the committee such printing is unusual in parliamentary bodies and therefore a proper extra charge. The balance of the account, being for materials furnished for the incidental printing and for the journals proper, a committee having been charged with the settlement of their account for printing and binding the journals, and the materials furnished for the incidental printing, is included in their contract to do the incidental printing for one cent, and therefore not being an equitable charge the committee recommended that they have leave to withdraw that part of their account.

"Respectfully submitted,

A. FOWLER
E. S. CASE
T. SEAR

The question was then put upon the adoption of the report and was decided in the affirmative.

[Mr. Judd: Mr. President—I cannot allow the present remark to pass without saying a few words. This he did with great reluctance being well advised of a very pertinent remark to be found in the poem of Washington (the special friend of the gentleman from Grant, Mr. O. Cole) if he recollected right—for it was more than thirty years since he had read it). The remark to which he alluded was in these words:

That man is sure to lose
Who looks his hands with thirty losses.

If he could have profited by this wholesome admonition consistent with his duty, he would most cheerfully have done so; but, inasmuch as he could not, as a matter of duty he would proceed to submit a few observations.

Sir, said Mr. Judd, when the proposition was first made to elect a printer to the convention, he had with many of the gentlemen constituting a majority of the convention refused to unite in such election for the reason that he preferred to let the printing be contracted to the "lowest bidder." This course was adopted by order of

the convention; proposals were issued; and the *Argus* having put in the lowest bid, it was given to that office. This was done in a fair business way and by the solemn vote of the convention. He was in earnest then and he was equally in earnest now. The *Argus* office bid "one cent" for "the incidental printing," and this being the lowest bid received, the convention had no alternative but to accept it—this the editors knew when they made their bid, and if any blame could attach anywhere, it was not to him nor to the convention, but to the editors themselves.

But, Mr. President, what have we here? A bill for printing the daily slips or journal of upwards of two hundred dollars! These slips are a part and parcel of the incidental printing as much as printing reports of committees, the articles proposed, or any other matter which was required to be printed. In fact, it was incidental in its nature, being required for the daily use of the convention as it proceeded in its labors—if anything was incidental this printing was certainly so. How then can these editors come gravely in here now and demand the pay over and above this contract? With what show of justice could they look this convention in the face when they present this bill? Sir, it is of a piece with their whole conduct since the organization of this body. It must be recollected that soon after their bid of "one cent" had been accepted the same paper came out with an article declaring they had "struck a lead," and exulting in this manner at their own folly and ending by attempting to cast ridicule upon the whole convention by declaring they would do the printing for "nothing rather than that a Whig should do it." This they had a right to do; they made such offer; and he would now hold them to their own offer. But what did this "lead" mean? Every man, at least every miner, knows what a "lead" means; it means a vein or channel by which the rich ore was to be reached; and if this was to be the end of the matter—if this bill is to be allowed—then he would with all deference allow that it was a "lead" and a rich one, too. If this remark was intended to "lead" to this result, then it had meaning! And the editors were truly entitled to great sagacity in the use they had made of the term.

There was another very extraordinary feature in this bill! He found on examination of it a charge of \$314 for material for printing these journals. Upon looking over the items he found an estimate to the amount of \$139.52 for paper, leaving a balance of \$174.-48 for the other materials! Now this sum was so large that the

the convention; proposals were issued; and the Ayres having put in the lowest bid, it was given to that office. This was done in a fair business way and by the solemn vote of the convention. He was in earnest then and he was equally in earnest now. The Ayres office bid "one cent" for "the incidental printing," and this being the lowest bid received, the convention had no alternative but to accept it—this the editors knew when they made their bid, and if any blame could attach anywhere, it was not to him, nor to the convention, but to the editors themselves.

But Mr. President, what have we here? A bill for printing the daily ship or journal of upwards of two hundred dollars! These ships are a part and parcel of the incidental printing as much as printing reports of committees, the articles proposed, or any other matter which was required to be printed. In fact, it was incidental in its nature, being required for the daily use of the convention as it proceeded in its labors—if anything was incidental this printing was certainly so. How then can these editors come gravely in here now and demand the pay over and above this contract? With what show of justice could they look this convention in the face when they present this bill? Sir, it is of a piece with their whole conduct since the organization of this body. It must be recollected that soon after their bid of "one cent" had been accepted the same paper came out with an article declaring they had "snuck a lead" and exulting in this manner at their open folly and ending by attempting to cast ridicule upon the whole convention by declaring they would do the printing for "nothing" rather than that a Whig should do it. This they had a right to do; they made such offer; and he would now hold them to their own offer. But what did this "lead" mean? Every man, at least every minor, knows what a "lead" means; it means a vein or channel by which the rich ore was to be reached; and if this was to be the end of the matter—if this bill is to be allowed—then he would wish all reference show that it was a "lead" and a rich one, too. If this remark was intended to "lead" to this result, then it had meaning! And the editors were truly entitled to great sagacity in the use they had made of the term.

There was another very extraordinary feature in this bill! He found on examination of it a charge of \$214 for material for printing these journals. Upon looking over the items he found an estimate to the amount of \$180.52 for paper, leaving a balance of \$33.48 for the other materials! Now this sum was so large that the

gentleman from Rock (Mr. Harvey), being a man of some experience in these matters, took it for granted that it must be for "new type," which the editors had apprised us they had procured for this express purpose. And well he might. But these editors (cautious souls) had since informed the convention through that gentleman that type was no part of the charge. Now, said Mr. Judd, he did not know himself much about the materials for printing; but he did know some things and he took this occasion to say that what he did know he knew as well as any man. He had supposed that the only materials which entered into the necessary components of printing material, exclusive of type and press, were paper and ink. And if it required but \$139.52 for paper, he would say that he knew it did not require \$174.48 worth of ink to print \$139.40 worth of paper. He might be mistaken in supposing that no other materials than paper and ink were required in printing; if he was, he hoped some gentleman would give him some information in this matter. If he was right, then he repeated what he had before said, that he knew so much ink was not required, unless, indeed, it was for the purpose of confirming the "lead" which the editors had "struck." He could not, he would not, consent in this way to confirm the anticipations of those editors.

But, Mr. President, there is more connected with this subject. These editors in a communication addressed to a committee of this convention under date of January 17, 1848 had insulted directly a majority of this body—he meant the celebrated "No-tailed Rat" communication, in which they had said they would have sixty-five cents per thousand ems for printing, or they would have nothing. This was but a part and parcel of their course during the sitting of the convention. They had attacked at one time an individual member of the convention in a gross, indecent manner, thereby showing a total disregard of the time, condition, and circumstances under which they were to indulge in the grossest and vilest assaults upon common courtesy and the freedom of debates and action of members of this body; and if it were only for himself he would take heed from another remark made by Hudibras, in these words:

Where there's no honor to be gained
It's lost in being maintained.

But he could not leave these "rats" in this manner—he meant the whole concern, from the head "No-tailed Rat," the "Old Rat," the

"Sharp-faced Rat," down to the "Green-eyed Rat" and all the little rats in the office. They had busied themselves this day by exhibiting to sundry members in this hall, he had been told, a seal which they proposed as a "coat of arms for the state," of which the following is a copy: (Mr. Judd here exhibited a caricature in the form of a seal with the following mottoes: Around the upper part of the circle was "Great Democratic Principles"; on the lower, "Jew the Printer"; and in the center, "One Cent.")

Here, then, said Mr. Judd, is a facsimile of what these notable gentlemen had passed around this hall today. He meant the "Old Rat" and the second in the concern, the "Sharp-faced Rat." These were considered the head of the firm. He did not know but that they had acted according to their best judgment and sense in so conducting, for he had long thought and in fact he did not believe they had any common sense from the top to the bottom of the whole shop. These are the men, then, who propose "to give tone to public opinion," to take the lead in the ranks of Democracy! Aye, sir, and, said Mr. Judd, he had been told that one of the minor rats of that office had said to gentlemen, members of this convention, within two or three days, that "he (Mr. Judd) was to be written down in that paper at any rate"; that "they had the power to do it; they could write any man down in six weeks." The same rat also said that he was disposed to mourn over the deplorable condition of certain other younger members of the convention on account of their connection with the "doomed man," and various other expressions of like tenor. Now, sir, this is the press which claims all the Democracy for itself! They will "write down" or write up any man whom they please—or, in other words, they will put every man in their collar, in their traces, and will put the bit into his mouth, and whither they will, he must go.

This insolent dictation may do for them; it may suit the meridian of "some" Democrat! But he would assure gentlemen that it did not suit "the great principle," or, if they would have it so, "the great Democratic principle." This "great principle," sir, is at war with all such ideas, in direct opposition—it was entirely antagonistical to all such doctrine. The "great Democratic principle" was in favor of the greatest good to the greatest number. And as such he would say this principle was alive and always to be found at home. Under all circumstances, in all places, this "great principle" would be found battling for equal rights, equal privileges, and

"Sharp-faced Rat," down to the "Green-eyed Rat," and all the little rats in the office. They had posted themselves this day by exhibiting to sundry members in this hall, he had been told, a seal which they proposed as a "coat of arms for the state," of which the following is a copy: (Mr. Judd here exhibited a caricature in the form of a seal with the following mottoes: Around the upper part of the circle was "Great Democratic Principles"; on the lower, "Law the Printer"; and in the center, "One Cent.")

Here, then, said Mr. Judd, is a facsimile of what these notable gentlemen had passed around this hall today. He meant the "Old Rat," and the second in the concert, the "Sharp-faced Rat." These were considered the head of the firm. He did not know but that they had acted according to their best judgment and sense in so conducting, for he had long thought and in fact he did not believe they had any common sense from the top to the bottom of the whole shop. These are the men, then, who propose "to give tone to public opinion," to take the lead in the ranks of Democracy! Ay, sir, and, said Mr. Judd, he had been told that one of the minor rats of that office had said to gentlemen, members of this convention, with in two or three days, that "he (Mr. Judd) was to be written down in that paper at any rate"; that "they had the power to do it; they could write any man down in six weeks." The same rat also said that he was disposed to modify over the negligible condition of certain other younger members of the convention on account of their connection with the "doomed man," and various other expressions of like tenor. Now, sir, this is the press which claims all the Democracy for itself! They will "write down" or write up any man whom they please—or in other words, they will put every man in their collar, in their traces, and will put the bit into his mouth, and whither they will, he must go.

This insolent dictation may do for them; it may suit the megalomaniac of "some" Democrats! But he would assure gentlemen that it did not suit "the great principle," or if they would have it so, "the great Democratic principle." This "great principle," sir, is at war with all such ideas in direct opposition—it was entirely antagonistic to all such doctrine. The "great Democratic principle" was in favor of the greatest good to the greatest number. And as such he would say this principle was alive and always to be found at home. Under all circumstances, in all places, this "great principle" would be found battling for equal rights, equal privileges, and

equal participation in all public places—in short, always opposed to monarchy or special privileges to any.

Now, sir, why not treat this matter coolly and dispassionately, and if anything was due these “rats,” let them have their pay. He did not consider anything due them, but for the paper and ink, and for that he was ready and anxious to vote. While he said this, he would not allow them to come in here, or through this convention filch or steal from the public treasury.

Mr. Judd said he believed he had said enough. He would therefore close by saying if the *Argus* and its “rats” were to write him down, let them come on.

Lay on, MacDuff,
And dammed be he who first cries, “Hold, enough!”

Oh, such Democrats!—*Tri-weekly Express*, Feb. 3, 1848.]

On motion of Mr. King the convention adjourned until ten o'clock to-morrow morning.

The committee on revision and arrangement respectfully report the constitution as correctly enrolled. They also recommended the adoption of the following resolution: “Resolved, That Daniel R. Johnson be and he is hereby allowed \$75 for enrolling the constitution; and that the president certify the same for payment, out of the treasury.” And the question having been put upon the adoption of the resolution, it was decided in the affirmative.

Mr. Lewis introduced the following resolution, to wit: “Resolved, That the gentlemen employed to report the proceedings of this convention by the several papers are entitled to the thanks of this convention for the ability and impartiality with which they have discharged their duties.” And the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. King introduced the following resolution, to wit: “Resolved, That the president of this convention be and he is hereby authorized to have the enrolled constitution with the signatures attached transcribed upon parchment, to be verified by his certificate, and that the same be deposited in the office of the secretary of the territory, and that a sum not exceeding \$50 be appropriated towards defraying the expenses authorized to be incurred.” And the question having been put upon the adoption of the same, it was decided in the affirmative.

The report of the committee on revision and arrangement was then taken up.

Mr. Case moved that the reading of the constitution be dispensed with, which was agreed to. The question was then put upon the passage of the constitution, and was decided in the affirmative. And the eyes and ears being required by the rules, those who voted in the affirmative were [affirmative 69; for the vote see Appendix 1, roll call 142].

TUESDAY, FEBRUARY 1, 1848

Prayer by the Rev. Mr. Read.

Mr. Castleman moved that the reading of the journal of yesterday be dispensed with, which was agreed to.

Mr. Reed introduced the following resolution, to wit: "*Resolved*, That the thanks of this convention be presented to the Hon. Morgan L. Martin for the able and impartial manner in which he has discharged the arduous and responsible duties of presiding officer." And the question having been put by the secretary, upon the adoption of the same it was unanimously decided in the affirmative.

Mr. Lewis introduced the following resolution, to wit: "*Resolved*, That Thomas McHugh, Robert L. Ream, Thomas A. B. Boyd, and Frederick S. Walling be entitled to the thanks of this convention for the faithful and efficient manner in which they have discharged their duties as secretaries." And the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. Dunn, from the committee on revision and arrangement, made the following report, to wit:

"The committee on revision and arrangement respectfully report the constitution as correctly enrolled. They also recommend the adoption of the following resolution: '*Resolved*, That Daniel N. Johnson be and he is hereby allowed \$75 for enrolling the constitution; and that the president certify the same for payment, out of the treasury.'" And the question having been put upon the adoption of the resolution, it was decided in the affirmative.

Mr. Lewis introduced the following resolution, to wit: "*Resolved*, That the gentlemen employed to report the proceedings of this convention by the several papers are entitled to the thanks of this convention for the ability and impartiality with which they have discharged their duties." And the question having been put upon the adoption of the same, it was decided in the affirmative.

Mr. King introduced the following resolution, to wit: "*Resolved*, That the president of this convention be and he is hereby authorized to have the enrolled constitution with the signatures attached transcribed upon parchment, to be verified by his certificate, and that the same be deposited in the office of the secretary of the territory, and that a sum not exceeding \$60 be appropriated towards defraying the expenses authorized to be incurred." And the question having been put upon the adoption of the same, it was decided in the affirmative.

The report of the committee on revision and arrangement was then taken up.

Mr. Case moved that the reading of the constitution be dispensed with, which was agreed to. The question was then put upon the passage of the constitution, and was decided in the affirmative. And the ayes and noes being required by the rules, those who voted in the affirmative were [affirmative 60; for the vote see Appendix I, roll call 242].

The constitution was then signed by the president and secretary and by the members of the convention.

Mr. Dunn moved that the convention do now adjourn *sine die*, which was agreed to, when the President rose and addressed the convention as follows:

GENTLEMEN: Having accomplished the work for which this convention was called together, it only remains to declare its final dissolution. The result of our labors, if approved, becomes henceforth the supreme law of our adopted land, and whether well or ill done it stands forth as the record of our united opinions upon the form of government best suited to the condition of our people. Following the example set by the Great Architect of the universe, we may without irreverence look upon the pages of our constitution and pronounce the work of our hands to be good. It abounds in the declaration of those great principles which characterize the age in which we live, and which, under the protection of Heaven, will—nay, must—guard the honor, promote the prosperity, and secure the permanent welfare of our beloved country.

I should do injustice to my own feelings not to speak upon the present occasion in terms of high commendation of the order, respectful bearing, and courteous conduct which have marked our intercourse during our long and arduous session. All other considerations have apparently been merged in a uniform and united effort to study the public good and attain the favorable judgment of our fellow citizens.

For the complimentary language in which you have spoken of the part I have borne in your proceedings you will accept my humble and hearty thanks. It affords a testimonial of which any man may well be proud and will be ever held in grateful remembrance.

We are about to separate—many of us never to meet again on earth—and I bid you an affectionate adieu, with the fervent prayer that you may return in safety to your homes, that you may long enjoy the confidence and respect of your constituents, and that happiness and prosperity may attend you all through life.

I pronounce this body adjourned without day.

PRESIDENT CONVENTION

THOMAS M. MCHUGH, Secretary

APPENDIX I

Record of Votes on Roll Call in Convention

NUMBER OF ROLL CALL

Members	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16*	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Beall.....	n	a	a	a	n	n	a	a	a	a	a	a	a	a	n	n	a	a	a	---	---	a	a	n	a	a	a	a	---	n
Biggs.....	a	a	a	a	n	n	a	a	a	n	a	a	n	a	---	---	n	a	---	a	a	a	a	a	n	n	n	n	n	a
Bishop.....	n	a	n	n	a	a	n	n	---	a	a	n	n	n	n	n	n	n	n	n	n	a	a	n	a	a	a	a	n	n
Brownell.....	---	---	---	---	---	---	a	a	n	a	n	a	n	a	n	n	n	a	a	a	a	a	n	n	n	a	a	a	n	a
Carter.....	a	n	a	a	n	n	a	a	a	n	a	a	n	n	n	n	n	a	a	a	a	a	n	n	n	n	a	a	n	a
Case.....	a	n	a	n	a	a	n	a	n	a	n	n	a	n	a	n	a	a	a	a	a	a	a	a	n	n	n	n	n	a
Castleman.....	a	a	a	n	n	n	a	a	a	n	a	---	---	---	---	---	---	---	---	---	---	a	a	a	n	a	n	n	n	n
Chase.....	n	a	a	a	n	n	a	n	n	a	a	a	a	a	a	a	n	n	a	a	a	n	n	a	n	a	a	n	n	n
Cole, Albert G.....	a	a	n	n	a	a	n	a	a	a	n	n	n	n	n	n	a	a	n	n	a	a	a	n	a	a	a	a	n	a
Cole, Orsamus.....	a	n	a	a	n	n	a	n	n	n	n	n	n	n	n	n	a	a	n	n	a	a	a	a	a	a	a	a	n	a
Colley.....	a	n	a	a	---	a	a	a	a	n	a	n	a	n	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n
Cotton.....	a	n	n	n	n	n	a	a	a	n	n	---	---	---	---	---	---	---	---	---	---	a	a	a	n	a	n	n	n	a
Crandall.....	a	n	a	---	---	---	---	n	a	a	a	a	n	a	a	n	n	n	a	a	n	a	n	a	n	n	n	n	n	n
Davenport.....	a	a	n	a	n	n	a	n	a	a	a	n	a	a	n	n	a	a	a	n	n	a	a	n	a	a	a	a	n	n
Doran.....	---	---	---	---	---	---	a	a	n	n	n	n	a	a	a	n	n	n	n	a	---	n	n	a	n	n	n	n	n	a
Dunn.....	a	a	n	n	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a	a	a	n	a	a	a	n	n	a
Estabrook.....	n	a	n	n	a	a	n	a	n	a	n	a	a	a	n	n	n	a	n	n	n	n	a	n	n	a	a	n	n	n
Fagan.....	n	n	n	n	a	a	n	a	n	a	a	a	n	n	a	n	n	a	a	a	a	a	a	a	a	a	n	n	n	a
Featherstonhaugh.....	a	a	a	a	n	n	a	a	a	a	a	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Fenton.....	n	n	n	n	a	a	n	a	a	a	n	n	n	n	n	n	a	n	n	n	a	a	a	n	a	n	a	---	n	a
Fitzgerald.....	n	a	a	a	n	n	a	a	a	a	a	a	n	n	n	n	---	---	a	n	a	a	a	n	a	n	n	n	n	n
Folta.....	a	n	a	n	a	n	n	n	n	n	n	n	a	n	n	n	n	n	n	n	n	n	a	a	n	a	a	a	n	n
Foot.....	a	n	a	n	n	a	a	a	a	n	a	n	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
Fowler.....	n	a	n	a	n	n	a	n	a	a	a	n	n	a	n	---	---	n	a	a	a	a	n	n	n	n	n	n	---	---
For.....	n	n	n	n	a	a	n	n	n	n	n	n	n	a	a	a	n	---	---	a	a	a	a	a	a	n	n	n	n	a
Gale.....	a	n	a	a	n	n	a	a	a	a	a	a	a	a	a	a	a	a	a	a	a	a	a	a	n	a	a	n	n	n
Gifford.....	n	n	n	n	a	a	n	n	a	n	n	n	a	n	a	a	a	a	a	a	n	n	a	n	a	n	n	n	n	a
Harington.....	n	a	a	n	n	a	a	---	a	a	a	a	n	n	n	n	n	n	n	n	a	a	n	n	n	n	n	n	n	a
Harvey.....	---	a	a	n	n	a	a	a	a	n	a	a	n	a	a	a	n	n	n	a	---	a	n	n	n	n	n	n	n	n
Hollenbeck.....	a	n	a	a	n	n	n	a	a	a	a	a	a	a	a	n	n	n	a	n	a	n	n	n	n	n	n	n	n	n
Jackson.....	n	n	n	n	a	a	n	n	n	n	a	a	a	a	n	n	a	a	a	n	n	a	a	n	a	n	n	n	n	a
Jones.....	n	n	a	n	n	a	a	n	a	n	a	a	a	n	n	n	n	n	n	n	n	n	n	n	a	n	a	a	n	n
Judd.....	a	a	a	a	n	n	a	a	a	a	n	n	n	n	n	n	a	a	n	n	a	a	a	n	a	a	a	a	n	n
Kennedy.....	---	---	---	---	---	---	a	a	a	n	n	n	n	n	n	n	n	n	n	n	---	a	n	n	n	n	n	n	n	a
Kilbourn.....	a	a	a	a	n	n	a	a	a	---	n	n	n	n	n	n	n	n	n	n	n	a	n	n	a	n	n	n	n	n

*Chase is given in record in both affirmative and negative. Evidently one is a misprint for Case, but there is no way to solve the difficulty.

NUMBER OF ROLL CALL

MEMBERS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
King.....	a	n	n	n	a	a	n	a	n	a	n	n	n	a	n	n	n	n	a	a	a	a	a	a	n	n	n	n	n	n
Kinne.....	a	a	a	n	a	a	n	a	a	n	a	n	a	a	n	n	n	n	n	n	n	a	n	n	a	n	n	a	n	n
Lakin.....	a	n	a	a	n	n	a	n	a	a	a	a	a	n	a	n	a	n	a	a	a	a	a	a	n	a	a	a	a	a
Larkin.....	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
Larrabee.....	a	a	a	a	n	n	a	a	a	a	a	a	a	a	n	a	a	a	a	a	a	n	a	a	a	a	a	a	a	n
Latham.....	n	n	n	n	a	a	n	a	a	n	n	n	a	a	n	n	a	n	a	n	n	n	a	n	a	n	n	n	n	n
Lewis.....	a	n	n	n	a	a	n	a	n	a	n	a	a	a	n	n	a	a	n	n	n	a	a	a	n	a	a	a	a	n
Lovell.....	a	n	n	n	a	a	n	a	a	a	n	n	n	n	n	n	a	a	n	n	a	a	a	n	a	n	a	a	n	n
Lyman.....	a	a	a	a	n	n	a	a	a	a	a	a	n	a	a	n	a	a	a	a	a	a	a	a	a	a	a	a	a	n
McClellan.....	a	n	n	n	a	n	a	a	a	a	n	n	n	a	n	n	a	a	a	n	a	a	a	a	n	a	a	a	a	n
McDowell.....	a	a	a	a	n	n	a	a	a	a	a	n	n	n	n	n	n	n	n	n	a	a	a	n	n	n	n	n	n	n
Martin.....	n	a	n	n	a	a	n	n	n	a	n	n	n	n	n	n	a	n	n	n	a	a	a	n	a	a	a	a	n	n
Mulford.....	n	a	n	n	a	a	n	a	a	a	n	n	n	a	n	n	n	a	n	n	a	a	a	n	a	n	n	n	n	n
Nichols.....	n	n	n	n	a	a	n	n	a	a	n	n	n	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
O'Connor.....	a	a	n	n	n	a	a	a	a	n	n	n	n	n	a	n	n	n	n	n	a	n	n	n	a	a	a	a	n	n
Pentony.....	a	a	a	n	a	a	n	a	n	a	n	a	n	n	n	n	n	n	n	n	a	a	a	a	a	a	a	a	n	n
Prentiss.....	a	n	n	a	a	n	n	a	a	n	n	a	n	a	n	n	a	n	n	n	a	a	a	a	a	a	a	a	a	n
Ramsey.....	a	n	a	a	n	n	a	n	a	n	a	a	n	a	a	n	n	n	n	a	n	a	n	a	n	n	n	n	n	n
Reed.....	n	a	a	n	n	a	a	a	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
Reymert.....	n	a	a	n	n	n	a	a	n	a	n	n	n	a	n	n	a	n	n	n	a	a	n	n	a	n	n	a	n	n
Richardson.....	a	a	a	a	n	n	a	n	n	a	n	a	a	n	a	n	n	n	n	n	a	a	n	n	a	n	n	n	n	n
Root.....	a	n	n	n	a	a	n	a	a	a	n	n	n	n	n	n	n	n	n	n	n	a	a	a	n	a	n	n	n	n
Rountree.....	a	n	n	a	a	n	n	a	a	n	n	a	a	n	a	n	n	n	n	n	n	n	n	a	a	a	a	a	a	n
Sanders.....	a	a	a	n	n	n	a	a	n	a	n	a	n	n	n	a	a	a	a	n	a	a	a	n	a	n	n	n	n	n
Scagel.....	n	n	n	n	a	a	n	a	n	a	n	n	n	a	n	n	a	n	n	n	n	a	a	n	a	n	n	n	n	n
Schoeffler.....	n	a	a	a	n	n	a	a	a	a	a	a	n	n	n	n	a	a	a	n	a	a	a	n	a	a	n	n	n	n
Secor.....	n	a	a	a	n	n	a	n	a	a	a	n	a	a	a	n	n	a	a	n	a	a	n	a	a	n	n	n	n	n
Stedman.....	a	n	a	n	n	a	a	a	a	a	a	a	n	n	a	n	a	a	a	a	a	n	n	n	n	n	n	n	n	n
Turner.....	a	n	n	n	a	a	n	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
Vanderpoel.....	a	n	a	n	n	n	a	n	a	a	a	a	a	a	n	n	n	n	n	n	n	a	a	n	n	a	a	n	n	n
Ward.....	a	n	a	a	n	n	a	a	a	a	a	n	n	a	n	n	n	n	n	n	a	a	a	n	a	n	a	a	a	n
Warden.....	n	a	a	n	n	n	a	a	a	a	a	a	a	a	a	n	a	a	n	n	n	a	a	n	a	a	a	a	n	n
Wheeler.....	n	n	n	n	a	a	n	a	n	a	n	n	n	n	n	a	a	n	n	n	n	n	a	n	a	n	n	n	n	n
Whiton.....	a	a	a	a	n	n	a	n	a	n	a	a	a	a	n	n	n	n	n	n	a	n	a	n	a	n	a	n	n	n

NUMBER OF ROLL CALL

MEMBERS	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58
Beall.....	a	a	a	n	a	a	n		a	n	n	a	a	n	n	a	a	n					a	a	a	a	n	a
Biggs.....		a	a	n	a	a	n	a	a	a	n	a	a	a	n	a	a	n	n	n	n	n	n	a	a	n	n	a
Bishop.....	a	a	n	n	n	n	n	a	a	n	n	n	n	n	n	a	a	n	a	n	n		a	a	a	n		
Brownell.....	a	a	n	n	a	a	a	a	a	n	n	a	n	n	n	a	a	n	a	a	a	n	a					
Carter.....	a	a	n	n	a	n	a	a	a	a	a	a	a	n	a	n	a	a	a	a	a	a	a	a	n		n	n
Case.....	n	a	n	n	n	n	a	a	a	n	a	n	a	n	a		a	a	n	a	a	a	n	a	a	n	n	n
Castleman.....	a	a	a	n	a	a	n	a	a	a	a	n	n	a	a	n	a	a	n	a	n	n						
Chase.....	a	a	n	n	a	n	n	a	a	n	a	n	a	n	a	n	n	n	a	n	a	a	n	a	a	a	n	a
Cole, Albert G.....	a	a	n	n	n	n	a	a	a	n	a	n	n	n	n	a	n	a	a	a	a	n	n	n	n	n	n	a
Cole, Orsamus.....	a	a	n	n	n	n		a	a	a	n	a		a	n	n	n	n	n	n	n	n	a	n	n	a	n	n
Colley.....	a	a	a	n	a	a	n	a	a	n	a	n	a	n	a	n	a	a	n	a	a	a	n	a	a	a	n	n
Cotton.....	n	a	n	n	n	n	a	a	a	n	n	a	a	a	a	a	n	n	a	n	a	n	a	a	n	a	n	
Crandall.....		a	a	n	a	a	n	a	a	n	a	n		n	a	n	a	a	n	a	a	n		a	a			n
Davenport.....	a	a		n	a	a	n	a	a	n	n	n	a	n	a	n	n	a	a	a		a	n	a	n	a	n	a
Doran.....	n	n	n	n	n	n	a	a	a	n	n	a	n	n	a	a	a	a	n	a	n	a	a	n	a	n	a	n
Dunn.....	a	n	n	n	n	a	a	a	a	a	n	a	n	n	a	n	a	a	n	a	a	a	a	a	n	a	n	n
Estabrook.....			n	a	n	n	a	a	a	a	n	a	n	n	a	n	a	a	a	a	a	a	a	a				n
Fagan.....	a	a	n	n	a	a	a	a	a	n	a	a	n	n	n	a	a	a	a	a	a	a	a	a	a	a	n	a
Featherstonhaugh.....					a	a	n	a	a	n	n	a	a	n	n	a	n	n	a		n		a	n	a	a	n	a
Fenton.....	a	a	n	a	n	n	a	a	a	a	n	n	n	a	n	a	n	n	n	n	n	n		a	a	n	n	n
Fitzgerald.....					a	a	n	a	a	n	n	a	a	n	n	a	a	n	a	a	a	a	a	a	a		n	a
Folts.....	a	a	n	a	n	n	a	a	a	n	n	n	n	n	n	a	n	a	n	n	a	a	a	a	n	n	n	a
Foot.....	a	a	a	n	a	a	n	a	a	a	n	a	n	a	n	a	n	a	a	a	a	a	a	n	a	a	a	n
Fowler.....			n	n	a	n	a	a	a	n	n	a	n	n	n	a	n	n	a	n	n	a	a	a	a	a	n	a
Fox.....	n	n	n	n	n	n	a	n	a	n	n	a	n	n	n	n	n	n	a	a	a	a	a	a	a	a	n	a
Gale.....	a	a	n	a	a	a	n	a	a	n	a	a	a	n	a	n	n	a	n	n	a	a	a	a	a	a	n	n
Gifford.....	a	a	n	n	n	n	a	a	a	n	n	a		n	a	n	n	a	n	a	a	a	n	a	a	a	n	n
Harrington.....	n	n	n	n	n	a	a	a	a	a	n	n	n	n	a	n	a	a	a	a	a	a	n	n	a	a	n	n
Harvey.....			a	n	a		n	a	a	n	a	a	a	n	a	n	a	a	a	a	a			a	a	a		n
Hollenbeck.....	a	n	a	n	a	n	n	a	a	n	n	a	a	a	n	a	a	n	n	n	n	a		a				a
Jackson.....	n	n	n	n	n	a	a	a	a	a	a	n	n	n	a	n	n	a	a	a	a	n	a	a	a	a	a	a
Jones.....	n	a	n	n	a	a	n	a	a	a	n	n	n	n	n	a	n	n	a	n	n	a	a	a	a	a	n	a
Judd.....	a	a	a	n	a	a	n	a	a	a	a	n	a	n	a	n	a	a	a	a	a	a	a	a	a	a	n	a
Kennedy.....	a	a													n	n	a	a	n	a	n	n	n	a	a	n	n	n
Kilbourn.....	n	a	n	a	n	n	a	a	a	a	n	n	n	n	n	n	a	n	n	a	n	a	n	a	a	n	n	n

NUMBER OF ROLL CALL

MEMBERS	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
King.....	a	a	n	a	n	n	a	a	a	a	n	a	n	a	n	n	a	a	a	a	n	a	n	n	n	n	n	n	a	a
Kinne.....	a	n	n	a	n	n	a	a	a	n	n	n	n	n	n	a	n	n	a	n	a	n	a	a	a	a	n	n	n	n
Lakin.....	a	a	n		a	n		a	a	n-a	n	n	a	a	n	a	n	n	n	n	n	n	n	n	n	n	n	n	n	a
Larkin.....	a	a	n	n	n	n	a	a	a		n	a	n	n	a	n	n	a	a	a	a	n		a				n	a	a
Larrabee.....	a	a	a	n	a	a	n	a	a	n	a	n	a	n	a	n	n	a	a	a	a	a	n	a	a	a	a	a	a	n
Latham.....	a	a	n	a	n	n	a	a							n	n	a	n	n	a	n	a	n	a	a	a	a	n	a	a
Lewis.....	a	a	n	n	n	n	a	a	a	n	a	n	n	n	n	n	n	a		a	a	a	a	a	a	a	n		a	
Lovell.....		a	n	a	n	n	a	a	a	a	n	n	n	n	a	n	n	a	a	a	a	n	a	n	n	a	n	a	a	a
Lyman.....	n	a	a	n	a	a	n	a	a	n	n	n	a	n	a	n	n	a	a	a	a	a	a	a	a	a	n	a	a	n
McClellan.....	a	a		n	n	a	n	a	a	a	a	a	n	a	n	n	n	a	a	a	a	n	a	n	a	n	a	a	a	a
McDowell.....	n	a	a	n	a	a	n	a	a	a	n	n	n	a	n	n	n	a	n	a	n	n	a	a	n	n	a	n	n	n
Martin.....	a	a	n	n	n	a	a	a	a	n	n	n	n	n	n	a	n	n	a	n	n	a	a	n	n	n	n	n	n	n
Mulford.....	n	n	n	a	n	n	a	a	a	n	n	a	n	n	a	n	a	a	a	a	a	a	a	a	a	a	n	n	a	a
Nichols.....	n	a	n	a	n	n	a	a	a	n	n	n	n	n	n	a	n	n	a	a	a	a		a	n	n	n	a	a	a
O'Connor.....	a	a	n	a	n	n	a	a	a	n	n	n	n	a	n	a	n	n	a	n	n	a	a	n	n	n	a	a	a	a
Pentony.....	a	a	n	a	n	a	a	a		n	n	a	n	n	n	a	a	n	a	a	a	a	a	a	a	a	a	a	a	n
Prentiss.....	a	a	n	n	n	a	a	a	a	n	n	n	n	n	n	a	n		n	n	n	n	a	n	a	n	n	n	n	a
Ramsey.....	n	a	a	n	n	a	n	a	a	n	n	n	a	n	a	n	n	n	n	n	n	a	n	a	n	n	n	n	n	a
Reed.....	a	a	a	a	a	n	n	a	a	a	a	n	a	a	a	n	a	a	a	a	a					n	n	a	n	a
Reymert.....	n	a	n	n	n	a	n	a	a	n	n	n	n	n	a	n	n	a	a	a	a	a	a	a	a	a	n	n		n
Richardson.....	a	n	n	n	n	a	n	a	a	a	n	a	a	n	a	n	n	n	n	n	n	a	n	n	n	a	n	n	n	n
Root.....	a	a	n	a	n	n	a	a	a	n	a	a	a	a	n	a	a	a	a	a	a	a	a	n	n	n	a	a	a	a
Rountree.....	a	a	n	n	a	n	a	a	a	n	n	a	n	a	n	a	n	n	n	n	n	n	n	a	n	n	a	a	a	n
Sanders.....	n	n	n	n	n	a	n	a	a	n	n	a	n	a	n	a		a	a	a	a	n	a	n	a	a	a	a	a	n
Scagel.....	a	a	n	n	n	n	a	a	a	n	a	n	n	n	a	a		a	a	a	a	n	a	a	a	n	n	a	a	a
Schoeffler.....	a	a		n	a	a	n	a	a	n	n	n	n	a	n	n	n	n	a	n	n	a	a	n	n	a	a	a	a	n
Secor.....	n	a	a	n	a	a	n	a	a	n	n	a	a	n	a	n	a	a	a	a	a	a	a	n	n	n	n	a	a	n
Stedman.....	a	a												a	a	n	n	a	n	a	a		a	a	n	a	n	a	n	n
Turner.....	n	a	n	a	n	n	a	a	a	n	n	n	n	n	n	n	a	n	n	a	n	n	n	n	n	n	n	n	n	a
Vanderpoel.....	a	a	n	n	a	n	a	a	n	n	a	n	a	n	n	a	n	n	a	n	n	a	n	a	n	a	n	a	n	a
Ward.....	a	a			a	a	n		a				a	n	n	a	a	n				n							a	n
Warden.....	a	a	a	n	a	n	n			a	n	a	a	n	n	a	n	n	a	n	n	a								n
Wheeler.....	n	n	n	n	n	n	a	n	a	n	n	a	n	n	n	a	a	n	a	n	a	n	a	n	a	a	n	a	a	a
Whiton.....	a	a	a	n	a	a	n	a	a	a	a	a	a	n	a	n	a	a	a	a	a	a	a	a	a	n	n	n	a	n

NUMBER OF ROLL CALL

MEMBERS	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90
Beall	a	a	a	n	n	n	n	a	a	a	n	n	a	a	n	a	a	a	a	a	n	n	a	a	a	n	a	a	a	a
Biggs	n	n	n	n	a	n	a	n	a	a	n	n	a	a	a	a	a	a	n	a	n	n	a	n	n	a	a	a	a	a
Bishop	a	a	a	a	n	n	n	a	a	n	a	n	a	a	n	n	a	n	n	a	n	n	n	a	a	a	a	n	n	a
Brownell	n	n	a	a	n	a	a	a	a	a	n	n	a	a	a	n	a	a	n	n	n	n	a	a	n	n	a	a	a	a
Carter	a	a	a	n	a	a	a	a	a	a	n	n	n	n	n	n	n	n	n	a	n	n	n	a	a	n	n	n	n	n
Case	n	n	n	n	a	a	a	a	a	a	n	n	a	a	n	a	a	n	n	a	n	n	n	a	a	n	a	a	a	n
Castleman	n	n	n	n	a	a	n	n	n	a	n	n	a	a	n	a	a	a	a	a	n	n	n	a	n	a	n	a	a	a
Chase	a	a	n	n	a	a	a	a	n	a	n	n	a	n	a	n	n	n	n	a	a	a	a	n	a	n	a	a	a	n
Cole, Albert G.	a	a	a	n	n	n	n	n	a	n	n	n	a	a	n	n	n	n	a	a	n	n	n	a	a	a	n	n	a	a
Cole, Orsamus	n	n	n	n	a	a	a	a	n	n	n	n	a	a	a	a	n	n	n	a	n	n	a	a	n	a	a	n	n	n
Colley	a	n	n	n	a	a	a	a	a	a	n	n	a	a	a	n	n	a	n	a	n	n	a	a	a	a	a	n	n	n
Cotton	n	n	n	n	n	n	n	n	a	a	n	n	a	a	n	a	a	n	a	n	n	n	n	a	n	n	a	a	n	n
Crandall	n	n	n	n	a	n	a	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a	n	a	n
Davenport	a	a	a	n	a	a	a	a	a	a	n	n	a	n	a	n	n	n	n	a	n	n	n	n	a	a	a	n	a	n
Doran	n	n	n	n	a	a	a	n	n	n	n	n	a	a	n	a	a	n	n	n	n	n	n	a	n	n	a	a	a	a
Dunn	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
Estabrook	a	n	n	n	n	a	n	a	n	n	n	n	a	a	a	a	a	a	a	a	n	n	a	a	a	n	a	n	a	a
Fagan	n	a	a	n	a	a	a	a	n	a	n	n	a	a	n	n	n	n	n	a	n	n	a	a	a	n	a	a	a	n
Featherstonhaugh	a	a	a	n	a	a	a	n	a	n	n	n	a	n	a	n	a	a	a	a	n	n	n	a	a	n	n	n	n	n
Fenton	a	a	a	n	n	a	n	n	n	n	n	n	a	n	a	n	a	a	a	n	n	n	n	n	a	n	a	n	n	n
Fitzgerald	n	a	a	a	a	a	a	a	a	a	n	n	a	a	a	a	n	a	n	a	n	n	a	n	n	a	a	a	a	a
Folts	a	a	a	n	n	n	n	a	a	a	n	n	a	a	n	a	a	n	a	a	n	n	n	a	a	a	a	n	n	n
Foot	n	n	n	n	a	a	a	a	a	a	n	n	a	a	a	a	n	a	n	a	n	n	n	a	n	n	a	n	n	n
Fowler	n	n	n	n	n	n	n	a	n	a	n	a	a	a	a	n	a	n	a	n	n	n	n	a	n	n	a	a	a	n
Fox	n	n	n	a	a	a	a	a	a	a	n	n	a	a	n	a	a	n	a	n	n	n	n	n	n	n	a	a	a	n
Gale	n	n	n	n	a	a	a	a	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a	a	a	n
Gifford	n	n	a	n	n	n	a	a	n	n	n	n	a	a	n	a	a	a	n	a	n	n	n	a	a	n	a	a	a	a
Harrington	n	n	n	n	n	n	n	a	a	a	n	n	a	a	a	a	a	a	a	a	n	n	n	a	n	a	a	a	a	n
Harvey	a	a	n	n	n	a	n	n	n	n	a	n	n	a	n	a	a	a	a	a	n	n	n	n	n	n	a	n	n	n
Hollenbeck	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
Jackson	a	n	a	n	a	a	a	a	n	n	n	n	a	a	n	n	n	a	n	a	a	n	n	a	n	n	a	n	a	n
Jones	a	a	a	n	n	n	n	a	n	a	n	n	a	a	a	n	n	n	n	n	n	n	n	n	n	n	a	a	n	n
Judd	a	a	a	n	n	n	a	n	a	a	n	n	a	a	n	n	a	a	a	a	a	n	n	n	a	a	a	a	a	a
Kennedy	a	a	a	n	a	a	a	a	a	a	n	n	a	a	a	a	a	a	a	a	n	n	n	n	a	a	a	a	n	a
Kilbourn	n	n	n	n	n	n	n	a	n	a	n	n	a	a	n	n	a	n	a	a	n	n	n	n	a	n	n	a	n	n

NUMBER OF ROLL CALL

MEMBERS	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90
King	n	n	n	n	a	a	a	n	a	n	n	n	a	a	a	n	n	a	n	a	n	n	a	a	n	n	a	a	n	n
Kinne	n	n	n	n	n	n	n	n	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	a	n	a	a	n	n	n
Lakin	n	n	n	n	n	a	a	n	n	n	n	n	n	a	a	a	n	n	n	a	n	n	a	a	n	a	a	n	n	n
Larkin	a	a	a	n	a	a	a	a	a	n	n	n	a	a	a	n	n	a	n	a	n	n	n	n	n	a	n	n	n	a
Larrabee	a	a	a	n	a	a	a	a	a	n	n	a	a	n	n	a	a	n	a	a	n	n	a	n	n	n	n	n	n	n
Latham	n	n	n	n	n	a	a	n	a	n	n	n	a	a	n	n	a	n	a	a	n	n	n	a	n	n	a	a	n	n
Lewis	a	a	a	n	a	a	a	a	a	n	a	n	n	n	n	n	a	a	n	n	n	n	n	n	n	a	n	a	n	n
Lovell	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a	n	a	n	a	n	n	a	a	n	a	n	a	a
Lyman	n	a	a	n	a	a	a	n	a	n	a	n	a	a	n	n	n	a	n	a	n	n	n	n	a	n	a	a	n	n
McClellan	a	n	a	n	n	n	n	a	a	n	n	n	a	a	n	n	a	a	a	n	n	n	n	a	n	a	a	n	n	n
McDowell	n	n	n	n	a	a	a	a	a	a	n	n	a	a	n	n	a	n	a	n	n	n	a	a	n	n	a	a	n	n
Martin	a	n	a	n	n	a	n	n	a	n	n	n	a	a	n	a	n	n	a	a	n	n	n	a	n	n	a	n	n	a
Mulford	a	n	n	n	n	a	n	a	a	n	n	n	n	n	n	n	n	n	a	n	n	n	n	n	n	n	n	n	n	n
Nichols	n	n	n	n	a	a	a	n	a	n	n	n	n	n	n	n	n	a	n	a	n	n	n	n	n	n	n	n	n	n
O'Connor	a	a	a	a	n	n	n	n	n	n	n	n	a	a	n	a	a	n	a	n	n	n	n	a	n	a	n	a	n	a
Pentony	a	a	a	n	a	a	a	n	a	a	n	a	a	a	n	a	a	n	n	a	n	n	n	a	n	a	n	a	a	n
Prentiss	n	n	a	n	n	n	n	n	a	n	n	n	a	a	n	n	a	n	a	a	n	n	n	a	n	n	a	n	a	a
Ramsey	n	n	n	a	a	a	a	a	n	a	n	n	a	a	a	n	n	n	n	a	n	n	n	a	a	a	n	a	a	a
Reed	a	a	a	n	a	a	a	n	a	a	n	n	n	a	a	n	a	a	a	a	n	a	n	a	a	n	a	a	n	n
Reymert	a	n	a	n	n	a	n	a	a	n	n	n	a	a	a	n	n	a	n	a	n	n	n	n	n	n	a	n	n	a
Richardson	n	n	n	a	a	a	a	n	n	n	n	n	n	a	a	n	n	n	n	n	n	n	a	n	n	a	n	a	n	n
Root	a	n	n	n	n	n	n	n	a	a	n	n	a	a	n	n	n	a	a	n	n	n	a	n	a	n	a	a	n	n
Rountree	n	n	n	n	a	n	a	n	a	n	n	n	a	a	a	n	n	n	n	a	n	n	a	n	n	n	n	n	n	n
Sanders	a	n	a	n	n	n	n	a	n	a	n	n	a	a	n	a	a	a	a	n	n	n	n	a	a	n	n	a	n	a
Scagel	a	a	a	n	n	a	a	a	n	n	n	n	a	a	n	n	a	n	n	a	n	n	n	a	n	a	a	n	n	n
Schoeffler	a	a	a	n	a	a	a	a	a	n	n	n	a	a	n	a	n	n	n	n	n	n	n	n	a	n	a	n	n	n
Secor	a	a	a	n	a	a	a	a	n	a	n	n	n	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
Stedman	a	a	a	n	a	a	a	a	n	a	n	n	a	a	n	n	n	n	a	n	n	n	n	n	n	n	n	n	n	n
Turner	n	a	n	n	n	n	n	n	n	n	n	n	a	a	n	a	a	a	a	n	n	n	n	a	n	a	a	n	n	n
Vanderpoel	a	a	a	n	a	a	a	a	n	a	n	n	a	a	n	n	n	n	n	n	n	n	n	n	a	n	a	n	n	n
Ward	n	a	a	n	n	a	a	n	a	n	n	n	n	n	n	n	n	a	n	n	n	n	n	n	a	n	n	n	n	n
Warden	a	a	n	n	n	n	n	n	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a	n	n	n	n
Wheeler	a	n	n	a	a	a	a	a	n	n	n	n	a	a	n	n	a	a	a	n	n	n	n	n	a	a	a	n	a	a
Whiton	n	n	n	n	a	a	a	n	a	n	n	n	a	a	n	n	n	n	n	n	a	n	n	n	a	n	n	n	n	n

NUMBER OF ROLL CALL

MEMBERS	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	
Beall.....	n	n	n	a	a	a	a	a	a	n	a	n	n	n	a	a	a	n	n	n	a	n	n	n	a	a	n	n	n	n	
Biggs.....	a	a	a							n	a	a	a	n	n	n		a	a	n	n	n	n	n	a	a	a	a	a	a	
Bishop.....	n	n	a	a		a	a	n	n	n	a	n	a	n	a			n	n	n	a	a	a	n	n	a	n	n	n	n	
Brownell.....	n	n	a		a	a	a	n	a	n	a	a	n	n	a	a	a	n		n	a	a	n	n	n	a	n	n	n	n	
Carter.....																															
Case.....	a	a	a	n	n	n	a	n	n	n	n	a	n	n	a	a	a	a	n	n	a		n	n	n	a	a	a	a	n	
Castleman.....	a	a	n	n	n	a		n	n	n	n		n	n	n	n	a	a	a	a	a	n	n	n	n	n	a	a	a	a	
Chase.....	n	n	a	a	a	a	a	n	a	a	n	n	a	a	a	a	a	n	n	n	n	n	n	n	a	n	n	n	n	n	
Cole, Albert G.....	a	a	a	n	a	n	a	n	n	n	a	n	n	n	n	a	a	a	n	a	a	n	a	n	a	a	a	a	n	n	
Cole, Orsamus.....	n	n	a	n	n	n	a	n	a	a	n	n	n	n	a	a	n	n	a	a	n				n	n	n	n	n	n	
Colley.....	a	a		n	n	n	n	a	n	n	n	a	n	n	n	n	n	a	n	n	a	n	n	n	a	a	a	a	a	n	
Cotton.....	n	a	n	n	n	a	n	a	n	n																					
Crandall.....	n	a	n	n	n	n	n	a	n	n	n	a	n	n	n	n	n	a	n	n	a	n	n	a		a	a	a	a	a	
Davenport.....	a	a	a	n	a	a	a	a	n	n	n	n	n	n	n	n	a	a	n	n	a	a	n	n	a	a	a	a	a	n	
Doran.....	n	a	n	n	n	n	a	a	n	n	n	a		n	n	n	n	a	a	a	a	n	a	n	n	n	a	a	a	a	
Dunn.....																															
Estabrook.....	n	n	a	a	a	a	a	n	a	a	a	n	a	n	a	a	a	n	a	a	a	n	n	n	n	n	n	n	n	a	
Fagan.....	n	n	n	a	a	a	a	n	a	n	a	a	a	n	a	a	a	n	n	n	n	a	n	n	n	a	n	n	n	n	
Featherstonhaugh.....	n											n	n	n	n	n	n				a	a	n	a	a	a	a	a	a	n	
Fenton.....	n	n	a	n	a	a	a		a	n	a	n	a	n	a	a	n		a	n		n					n	n	n	n	
Fitzgerald.....	n			n	a	n	a	n	n	n	a	n	n	n	a	a	n	a	n	a	a	n	n	n	n	n	n	n	n	a	
Folts.....	n	n	a	a	a	a	a	n	a	n	a	a	n	n	a	a	a	n	n	n	a	n	n	n	a	a	n	a	a	a	
Foot.....	a	a	n	n	n	n	a	n	n	n	n	a	n	n	n	n	n	n	a	n	n	a	n	n	a	a	a	a	a	n	
Fowler.....	n	n	n	n	n	n	n	a	n	n								a	n	n	a	a	n	n		a	a	a	a	n	
Fox.....	n	n	a	a	a	a	a	n	n	a		n	a	n	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	
Gale.....	a	a	n	n	n	n	a	n	n	a	n	a	n	n	n	a	a	n	n	a	n	a	n	n	n	a	a	a	a	n	
Gifford.....	n	n	a	a	a	n	a	n	a	n	a	a	n	n	a	a	a	a	a	a	n	n	n	n	n	n	n	a	a	a	
Harrington.....	n	n	n	n	a	a	a	n	n	n	n	n	n	n	a	a	a	a	n	n	a	a	n	n	n	n	a	a	a	a	
Harvey.....	a	a	n	n	n	n		a	n	n	n	a	n	n	a	a	a	a	a	a		n	n	n	a	a	a	a	a	n	
Hollenbeck.....																															
Jackson.....	a	a	a	n	a	a	a	n	n	n	n	a	n	n	a	n	n	a	a	a	n	n	n	n	n	n	a	a	a	a	n
Jones.....	n	n	n	a	a	n	a	n		n	a	n	n	n	a	a	a	n	n	n	a	n	n	n	a	a	n	n	a	a	
Judd.....	a	a	a	n	a	n	a	n	a	n	a	a	n	n	a	a		a	n	n	a	n	n	n	n	a	a	a	a	a	
Kennedy.....	n	n	n	a	n	a	n	a	n	a		a	n	n	a	a	a	n	n	n	n	n	n	n	n	n	a	a	a	a	
Kilbourn.....	a	n	a	n	n	a	n	a	n	n	a	a	n	n	n	n	a	a	a	a	n	n	n	n	n	n	a	a	a	n	

NUMBER OF ROLL CALL

MEMBERS	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	
King.....	a	a	a	n	n	n	a	n	n	n	n	a	n	n	a	a	n	a	a	a	n	n	n	n	n	n	n	a	a	a	a
Kinne.....	n	n	a	n	---	a	a	n	n	n	a	n	n	a	a	a	n	n	n	n	a	a	n	n	a	a	n	n	a	n	---
Lakin.....	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a	a	n	n	a	a	n	n	n	n	n	a	a	a	a	a	a
Larkin.....	a	n	n	n	a	n	---	a	n	n	a	a	n	n	a	a	a	a	n	n	a	n	---	n	n	a	n	n	a	a	a
Larrabee.....	n	a	n	a	a	n	a	n	a	a	a	n	a	n	a	a	a	n	a	a	a	n	n	n	n	a	a	n	n	a	n
Latham.....	n	n	a	a	a	a	a	n	a	n	n	n	a	n	a	a	n	n	a	a	n	a	n	n	n	---	n	n	a	n	n
Lewis.....	n	n	n	a	a	n	a	n	a	n	a	a	n	n	n	n	a	a	n	n	a	a	n	n	n	---	a	n	a	n	n
Lovell.....	n	n	n	n	n	a	n	n	n	n	a	a	n	n	a	a	a	n	a	a	n	a	n	n	n	a	n	n	a	n	n
Lyman.....	a	a	n	n	n	a	a	n	a	a	n	a	n	n	a	a	a	a	a	n	a	a	n	n	a	a	a	a	a	a	n
McClellan.....	n	n	n	n	a	n	n	a	a	n	a	n	a	n	n	n	a	a	n	n	a	a	n	n	a	a	a	a	a	a	---
McDowell.....	a	a	a	n	n	a	a	n	n	n	a	a	n	n	n	n	a	a	a	a	n	n	n	n	n	n	a	a	a	a	a
Martin.....	n	n	n	n	a	a	n	a	a	a	a	n	a	n	a	a	a	n	n	a	a	a	n	n	n	n	a	n	n	n	a
Mulford.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	n	n	a	a
Nichols.....	n	n	a	a	n	n	a	n	a	n	a	a	n	n	a	a	a	n	n	n	a	a	n	n	n	n	n	a	n	n	a
O'Connor.....	n	n	a	n	n	a	a	n	a	n	a	a	a	n	a	a	a	n	a	a	a	n	n	n	n	a	a	n	n	n	a
Pentony.....	n	n	a	a	a	n	a	n	a	n	a	a	a	n	a	a	a	n	n	n	a	a	n	a	a	a	a	n	n	a	a
Prentiss.....	a	n	n	a	a	a	a	n	n	n	a	a	n	a	n	n	a	a	n	a	n	n	n	n	n	a	a	a	a	a	n
Ramsey.....	n	n	a	n	n	a	a	n	a	a	a	a	a	n	a	a	a	n	n	n	a	n	n	n	a	a	a	n	n	a	a
Reed.....	a	a	a	n	n	n	n	n	n	a	n	n	n	n	a	a	---	a	a	a	n	n	n	n	n	n	n	n	a	a	---
Reymert.....	n	n	n	n	n	a	a	n	n	a	n	a	n	n	n	a	---	a	a	n	---	a	n	n	n	n	a	a	a	a	---
Richardson.....	a	n	n	n	n	n	a	n	a	a	a	n	n	a	a	a	a	n	a	a	a	n	n	n	n	n	a	n	n	n	a
Root.....	n	a	a	n	n	n	a	n	n	n	a	n	n	n	a	a	a	a	a	a	a	n	n	n	n	n	n	a	a	a	a
Rountree.....	n	n	a	a	a	a	n	a	a	n	n	n	a	n	a	a	a	n	n	n	a	n	n	n	n	a	a	n	n	n	n
Sanders.....	a	a	a	a	a	---	n	a	n	n	a	a	n	---	---	---	---	a	a	n	a	n	n	n	n	a	a	a	---	a	n
Scagel.....	n	n	n	a	a	n	n	a	a	n	n	a	n	n	a	a	a	n	n	n	n	n	n	n	n	a	n	n	n	n	n
Schoeffler.....	n	n	n	a	a	a	n	a	a	n	n	n	n	n	a	a	n	n	a	a	---	a	n	n	n	n	n	n	n	n	n
Secor.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Stedman.....	a	a	n	n	n	n	n	n	n	n	n	a	n	n	n	n	a	a	n	n	n	n	n	n	n	n	a	a	a	a	n
Turner.....	a	n	n	a	a	n	a	n	n	n	n	n	n	n	n	a	a	a	a	n	n	a	a	n	n	n	n	a	a	a	n
Vanderpoel.....	n	n	n	n	a	n	a	n	a	a	a	n	n	n	a	a	a	n	n	n	n	n	n	n	n	a	a	n	n	a	a
Ward.....	n	n	n	---	---	---	n	---	---	---	a	n	n	a	a	a	n	a	n	n	n	a	n	---	a	a	a	a	a	a	a
Warden.....	n	n	a	n	n	a	a	---	a	---	a	n	a	n	a	a	n	n	a	n	a	n	n	n	n	n	n	n	n	n	n
Wheeler.....	n	n	a	a	a	a	a	n	a	a	a	n	a	a	a	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n
Whiton.....	a	a	n	n	n	n	a	a	n	a	n	a	n	n	a	a	n	a	a	n	a	n	n	n	n	a	a	a	a	a	n

MEMBERS	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	
Beall.....	n	n	n	a	a	a	a	a	a	n	n	n	a	a	a	a	n	n	n	n	n	n	a	n	a	a	a	a	a	a	
Biggs.....	a	a	a	a			a	a	a		n	n	a	a		a	a	a	n	a	a	a	a	n			a				
Bishop.....	n	n	n	n	a	a	a	a	a	n	n	n	a	a	a	a	n	a	n	n	n	n	a	a	a	a	n	a	a	a	
Brownell.....	n	n	n			a	a	a	a	a	n	n	n	n	n	a	a	a	n	a	a	n	n	a	a	a	a	a	a	a	
Carter.....						a	a	a	a	a	a	n	a	a	a	a	a	a	n	a	a	a	a	n	a					n	
Case.....	n	n	n	a	a	n		a	a	a	a	n	a	n	a	a	n	a	n	a	a		a	a	a	n	a	a	a	a	
Castlemann.....	n	a	a	a	a	a	n	a	a	a	a		n	n	a	a	n	a	n	a	a	a	a	a	n	n	a	a	n	a	
Chase.....	a	n	n	a	a	a	a	a	a	n	a	n	n	n	a	a	n	n	n	n	n	n	n	a	n	a	n	a	n	a	
Cole, Albert G.....	n	n	n	a	a	a	a	a	a	n	a	a	a	n	a	a	n	n	n	n	n	n	n	a	a	a	n	a	n	a	
Cole, Orsamus.....	n	a	n	a	n	a	n	a	a	a	a	a	a	a	a	n	n	n	n	n	a	n	n	n	n			a	a	a	
Colley.....	n	n	a	a		a																									
Cotton.....							a	a	a	a	a	n	a	n	n	a	n	a	n	a	a	a	a	a	a	n	n	n	a	n	a
Crandall.....						a		a		a	a	n	n	n			a	a	n	a	n	n	a	n	n	a	a	a	n	a	
Davenport.....	n	n	n	a	a	a	a	a	a	n	a	a	n	n	a	a	n	n	n	n	n	n	n	a	n	a	n			n	a
Doran.....	a	a	a	a	a	a	n	a	a	a	a	n	n		n	n	n	a	a	a	a	a	n	a	a	a	n	a	n	a	n
Dunn.....						a	a	a	a	a	a	a	a	n	a	a	a	a	a	n	a	a	a	a	a	a	a	a	a	n	a
Estabrook.....	a	a	a	a	a	a	a	a	a	a	n	a	a	a	a	a	n	n	a	n	n	n	a	n	a	a	n	a	a	n	a
Fagan.....	a	n	n	a	a	a	a	a	a	a	n	a	a	n	a	a	n	a	a	a	a	n	a	a	a	a	a	a	a	a	n
Featherstonhaugh.....	a	n	n	a	a	a	a	a	a	a	a	a	a	a			a	a	a	n	a	a	a	a			a	n	a	a	
Fenton.....	n	n	n	a	n	a	a	a	a	a	a	a	a	n	n	a	a	a	n	a	a	a	a	a	a	a	a		n	n	a
Fitzgerald.....	a	n	n	a		a	a	a	a	a	n	n	n	n	a	n	a	n	a	n	a	a	a	a	a	n	a		a	n	n
Folts.....	n	n	n	a	n	a	a	a	a	n	n	n	n	n	n	n	a	n	n	n	n	n	n	n	a	n	n	a	a	a	a
Foot.....	a	n	n	a	n	a	a								n	a	a		n	a	n	a	a	n	n	a	a	a	a	a	a
Fowler.....	n	n	n	a	a	a	n	a	a	a	n	n	n		a	a	a	n	a	a	a	a									

NUMBER OF ROLL CALL

MEMBERS	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150
ng	a	a	n	a		a	a	a	a	a	n	n	n	n	n	a	a	n	a	a	a	a	a	a	a	a	a	n	a	n
nne	n	n	n	a	n	a	a	a	a	a	a	a	a	a	a	a	a	n	n	a	n	a	n	a	n	n	a	a	a	a
kin	n	a	n	a	n	n	n	n	n	a	a	a				n	n	a	a	n	a	n	n	n	n	n	n	a	a	n
rktn	a	a	a	a		a	a	a	a	n	n	a	a	a		a	a	n	n	a			n	n	a	n	a	a	n	n
arrabee	a	n	n	a	a	a	a	a	n	a	a	a	a	a	a	a	n	n	n	n	n	a	n	n	n	n	n	a	a	a
atham	n	n	n	a	n	a	a	n	n	a	a	a	a	a	a	a	a	n	n	a	a	n	n	a	a	a	a			
ewis	a	n	n	a	n	a	a	a	a	a	a	a	a	a	a	a	n	n	a	a	n	n	a	n	a	a	n	a	n	a
ovell	a	n	n	a	n		n	n	n	n	a	a	a	a	a	n	a	n	n		n	n	n	n	a	n	a	n	a	n
yman	a	n	n	a		a	a	a	a	n	n	n	a	a	a	a	n	n	n	n	n	n	n	n	a	n	a	n	a	n
McClellan	n	n	n	a		a	a	a	a	a	a	a	a	a	n	a	n	n	n	n	n	n	n	a	a	a	n	n		n
McDowell	a	a	n		n	a	a	a	a	a	n	n	n	n	a	a	n	n	n	n	n	n	n	a	a	a	a	n	a	n
Martin	n	a	n	a	n	a	n	a	a	n	n	a	a	a	a	a	n										n	a	a	n
Mulford	n	n	a	a		a	a	a	a	n	n	n	n	n	n	a	a	n	n	n	n	n	n	n	a	a	a	n	a	n
Nichols	n	a	n	a		a	n	a	a	n	n	n	n	n	n	a	n	a	n	a	n	n	n	a	a	a	a	a	a	a
O'Connor	n	a	n		n		a	a	a	a	a	a	a	a	a	n	a	n	a	n	n	n	n	a	a	a	a	a	a	n
Pentony	a	a	n	a		a	a	a	a	a	a	a	a	a	a	a	a	a	n	a	n	a	a	n	a	n	a	a		
Prentiss	n	n	n	a	a	a	a	a	a	a	a	a	a	a	n	n	a	n	n	n	n	n	n	n	a	n	a	a	a	n
Ramsey	n	a	n	a	n	a	a	a	a	a	a	a	a	n	n	a	a	n	n	n	n	n	n			a	a	a	n	n
Reed	a	a	a	a		a	n	a	a	a	a	n	n	n	n	a	a	n	n	n	n	n	n	n	a	n	a	n	a	n
Reymert	n	n	n	a	n	a										n	a	a	n	n	n	n	n	n	a	n	a	n	n	n
Richardson	a	a	n	a	a	a	n	a	a	a	a	a	a	a	n	n	a	n	a	n	a	n	a	a	a	a	a	n	a	a
Root	n	a	n	a	a	a	a	a	a	a	a	a	a	a	n	n	a	n	n	n	n	a	n	n	n	n	n	a		
Rountree	a	n	n	n	n	a	n	n	n	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a	n	a	a	n
Sanders	a	n	a	a	a	a	n	a	a	n	n	a	a	a	a	n	a	a	n	n	n	n	n	n	a	a	a	n	a	a
Scagel	n	a	n	a	a	a	a	a								a	a	a	n	n	n	n	n	n	a	a	a	n	a	n
Schoeffler	n	n	n	a	a	a										a	a	a	n	n	n	n	n	n	a	a	a	n	a	n
Secor							a	a			a	a	a	a	n		a	n												
Stedman	a	n	n	a	n	a			a	a	a	a	a	a	a		a	a	n	a	n	a	n	n	a	a	a	n	a	n
Turner	a	n	n	a		a	a	a	a	a	a	a	a	n	a	n	a	n	n	n	n	n	n	a	n	a	a	n	a	a
Vanderpool	n	a	n	a	n	a	a	a	a	n	a	a	a	a	a	n					n	a	n	n	a	a	a	a	a	n
Ward	a	a	n	a																										
Warden		a	n	n		a	a	a	a	a	a	a	a	a	n	a	a	n	a	n	n	n	n	n	a	a	n	a	n	n
Wheeler	n	a	n	a		a	a	a	a	n	n	n	n	n	n	a	a	a	n	a	n	n	n	n	n	n	n	a	n	n
Whitton	n	n	n	a		a	a	n	n	a	a	a	a	a	a	a	a	a	n	n	n	n	n	n	n	n	n	a	n	n

NUMBER OF ROLL CALL

MEMBERS	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179
Beall	n	a	n	n	n	a	a	a	n	a	a	n	a	n	n	a	n	n	n	n	---	---	a	---	a	---	a	a	n
Biggs	---	---	---	---	---	---	---	---	---	---	---	a	a	n	n	n	---	---	---	n	---	---	---	---	n	a	a	n	n
Bishop	n	a	n	n	n	a	n	n	a	n	n	a	a	a	a	n	a	n	n	a	a	a	n	a	a	---	a	n	n
Brownell	n	a	n	n	n	a	a	a	a	a	a	a	a	n	n	a	a	n	n	n	a	a	---	---	---	---	---	---	n
Carter	a	n	n	n	a	a	a	a	n	a	a	a	a	n	n	n	n	n	n	n	n	a	---	---	n	a	a	a	n
Case	n	a	n	n	n	a	n	a	n	a	a	a	a	a	n	a	n	n	n	n	n	a	n	a	n	a	a	a	n
Castleman	a	n	a	a	n	---	---	---	---	---	---	n	a	n	---	n	a	n	n	a	a	a	a	n	a	a	a	a	a
Chase	n	a	n	n	n	a	n	n	---	n	n	n	n	n	n	a	n	n	n	n	n	a	n	n	a	n	a	a	n
Cole, Albert G.	a	n	---	---	---	---	n	n	n	n	n	n	a	a	a	n	n	n	n	n	a	a	a	a	a	a	n	a	n
Cole, Orsamus	a	n	a	---	---	---	n	n	a	n	n	a	n	a	a	n	a	n	n	n	---	---	a	a	a	a	a	a	a
Colley	---	---	---	---	---	---	---	---	---	---	---	a	n	n	n	a	---	n	n	n	---	---	---	n	a	a	a	a	n
Cotton	a	n	a	n	n	a	n	n	a	n	n	a	a	a	a	n	n	n	n	n	a	a	n	n	---	---	---	---	---
Crandall	n	a	---	---	---	---	---	---	---	---	---	n	n	n	n	n	n	n	n	n	n	a	n	n	a	---	---	a	n
Davenport	n	a	---	n	n	a	n	a	a	a	a	n	n	n	n	n	n	n	n	n	n	a	a	a	a	n	a	a	n
Doran	n	n-a	a	n	a	n	n	a	n	a	a	n	a	a	a	n	a	n	n	n	a	a	a	n	n	n	a	n	n
Dunn	a	---	a	n	n	n	n	n	n	n	n	a	a	a	a	n	n	n	n	n	a	a	a	a	a	n	a	a	n
Estabrook	n	a	n	n	n	n	---	---	---	---	---	n	a	a	a	a	a	n	n	n	---	---	n	a	a	a	a	a	n
Fagan	n	a	n	n	n	a	a	a	n	a	a	a	a	n	n	n	a	n	n	n	n	n	a	a	a	a	a	a	n
Featherstonhaugh ..	n	a	n	n	n	n	a	a	n	a	n	---	---	---	---	n	n	n	n	n	n	a	a	a	a	a	n	a	n
Fenton	a	n	a	n	n	n	n	n	n	n	n	n	a	a	a	n	n	n	n	n	n	a	a	a	a	a	n	a	n
Fitzgerald	n	a	n	n	n	n	a	a	n	a	a	a	n	n	n	n	n	n	n	n	n	n	n	a	n	a	a	a	n
Folts	n	---	n	n	n	a	n	n	n	n	n	a	a	a	a	a	a	n	n	n	a	a	n	a	n	a	n	a	n
Foot	a	n	a	n	n	a	n	n	n	n	n	n	n	n	n	a	a	n	n	n	n	n	n	n	a	a	a	a	a
Fowler	---	a	n	n	n	n	n	n	a	n	n	n	a	n	n	---	a	n	---	n	n	n	n	n	n	n	n	n	n
Fox	---	---	---	---	---	---	---	---	---	---	---	a	a	n	a	n	---	n	n	---	---	---	a	a	n	a	a	a	a
Gale	n	a	n	n	n	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a	a	a	a	---	n	a	n
Gifford	n	a	---	n	---	n	a	a	a	a	a	a	a	a	a	n	n	n	n	n	n	a	a	n	n	a	---	a	n
Harrington	n	a	n	n	n	a	---	---	---	---	---	n	a	a	n	n	a	n	n	n	a	a	a	a	a	a	a	a	n
Harvey	n	n	a	n	a	a	n	n	n	n	a	a	a	a	n	n	n	n	n	n	---	---	a	a	a	a	a	a	n
Hollenbeck	n	a	---	---	---	---	n	n	a	a	n	n	n	n	n	a	a	n	n	n	---	---	a	a	a	a	a	a	n
Jackson	a	n	a	n	n	a	n	n	a	n	n	n	a	a	a	n	n	n	n	n	a	n	a	n	a	---	n	a	n
Jones	n	a	n	n	n	a	n	n	a	n	n	a	a	a	a	a	n	n	n	n	a	a	a	a	a	a	a	n	n
Judd	n	a	n	n	n	n	n	a	a	a	a	n	n	n	n	n	n	n	n	n	a	a	a	n	a	---	a	a	n
Kennedy	a	n	---	a	n	n	n	n	a	n	n	n	a	n	n	n	a	a	n	a	a	a	a	a	a	n	a	---	n
Kilbourn	a	n	a	n	n	n	n	n	a	n	n	n	a	n	n	a	n	n	a	a	a	a	n	n	a	n	n	n	n

NUMBER OF ROLL CALL

MEMBERS	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180
ing.....	a	n	a	n	a	a	n	n	n	n	n	a	a	a	a	a	n	n	n	n	a	a	a	a	a	a	a	a	n	a
inne.....	n	a	n	n	n	a	n	n	n	n	n	n	a	n	n	n	a	n	n	n	---	a	a	a	a	a	a	a	n	a
akin.....	a	n	a	a	a	n	n	n	a	n	n	a	n	n	n	n	a	a	a	n	n	n	n	n	a	a	a	n	a	a
arkin.....	n	a	n	n	n	n	n	n	a	n	n	n	a	---	a	n	a	n	a	n	a	a	a	---	a	a	n	n	a	a
arrabee.....	n	a	n	a	n	n	n	a	n	a	n	n	n	n	n	a	a	n	n	n	n	a	a	a	a	a	n	a	a	a
atham.....	n	a	n	n	n	n	n	n	n	n	n	n	a	a	a	n	n	n	n	n	n	a	a	a	a	a	n	a	a	a
ewis.....	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	a	a	a	n	a	---	a	n	a
ovell.....	n	a	a	n	n	n	n	n	a	n	n	a	a	a	a	n	n	n	a	a	a	a	a	n	a	---	---	n	n	---
lyman.....	n	a	n	n	n	n	n	n	n	n	n	n	n	n	n	a	a	n	n	n	n	n	a	a	a	a	n	a	a	n
McClellan.....	a	n	a	n	n	---	---	---	---	---	---	---	a	a	a	n	n	n	n	n	n	---	---	---	---	---	n	a	a	n
McDowell.....	a	n	a	n	n	n	n	n	n	n	n	n	a	n	n	n	n	n	n	n	n	---	---	---	a	a	n	a	a	n
Martin.....	n	a	n	n	n	n	n	n	a	n	n	n	a	a	a	n	n	n	n	n	n	a	a	a	---	a	a	a	a	n
Mulford.....	n	a	n	n	n	n	n	n	a	n	n	n	a	a	a	n	a	n	n	n	n	a	a	a	a	a	n	a	n	n
Nichols.....	n	a	n	n	a	a	---	---	---	---	---	n	n	a	n	a	n	n	n	n	n	a	a	a	---	a	n	a	a	n
O'Connor.....	a	n	a	n	n	n	n	n	a	n	n	n	a	n	n	n	n	n	n	n	n	a	a	a	a	a	a	n	n	n
Pentony.....	n	a	n	n	n	a	a	a	n	a	n	a	a	a	n	n	n	a	n	n	a	n	n	n	n	n	a	a	n	n
Prentiss.....	---	a	n	n	n	n	n	n	n	n	n	n	a	a	a	n	---	---	---	---	---	---	---	n	a	a	a	a	a	a
Ramsey.....	n	a	n	n	a	a	n	n	a	n	n	a	n	n	n	n	n	a	n	n	n	n	n	n	n	n	a	a	---	n
Reed.....	a	n	a	n	a	a	a	a	n	a	n	n	a	n	n	n	n	n	n	n	n	n	a	a	---	a	n	a	a	n
Reymert.....	a	n	a	---	a	n	n	n	a	n	n	n	n	a	n	n	n	n	n	n	n	n	n	n	n	---	a	a	a	n
Richardson.....	n	a	n	n	n	n	n	n	a	n	a	n	n	n	n	n	a	n	n	n	n	n	n	n	n	n	a	a	n-2	n
Root.....	a	n	a	n	n	n	a	a	a	a	a	a	a	a	a	n	a	n	a	a	a	a	a	a	n	a	a	a	a	n
Rountree.....	---	n	n	a	n	n	n	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a	a	n	a	n
Sanders.....	n	a	n	n	n	n	n	n	n	---	n	n	a	n	a	n	n	n	n	n	n	n	a	n	n	a	n	a	a	n
Scagel.....	n	a	n	n	n	a	n	n	a	a	a	n	a	a	a	n	n	n	n	n	n	n	a	n	n	a	n	a	a	n
Schoeffler.....	n	a	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Secor.....	---	---	n	n	a	n	a	n	a	a	n	n	n	n	a	---	n	n	n	n	n	n	n	---	a	a	---	a	a	n
Stedman.....	n	a	n	n	n	a	n	n	a	n	n	a	n	n	n	a	a	n	n	n	n	a	a	a	a	a	a	a	n	a
Turner.....	n	a	n	n	n	n	a	n	n	a	a	a	a	a	a	n	a	n	n	a	a	a	a	a	a	a	a	a	n	n
Vanderpoel.....	n	a	n	n	n	n	n	n	n	n	n	n	a	n	n	n	n	n	n	n	n	a	a	a	a	a	a	a	n	n
Ward.....	n	a	---	n	a	a	n	a	a	n	a	a	n	n	n	---	n	---	n	---	n	a	a	---	---	a	a	---	a	n
Warden.....	---	a	a	n	a	n	n	---	---	---	a	a	a	n	n	n	---	n	---	n	---	n	a	n	n	n	n	a	a	n
Wheeler.....	n	a	---	---	---	---	---	---	---	---	---	n	a	a	a	n	n	n	n	n	n	n	a	n	n	n	n	a	a	n
Whiton.....	a	n	a	a	a	n	n	n	n	n	n	a	n	n	n	n	n	n	n	n	n	n	n	n	a	n	n	a	a	n

MEMBERS	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	
Beal.....	n	n	a	a	a	n	a	a	n	n	a	n		n	a	n	n	n	n	a	a	n	a	a			a		a	a	n	
Biggs.....				a	a	n		a	n	n	a	n	a	n	a	a	a	n	a	n	a	a	n									
Bishop.....	n	n	n	a	a	n	a	a	n	a	n	n	n	n	n	n	n	n	a	n	a	n	a	a	a	a	n		n	a		
Brownell.....	n	a	a	a	a	n	a	a	a	n	a	n	a	n	n	a	a	n	n	a	a	a	n	a	a	n	a	n	a	n	a	n
Carter.....	a	a	a	a	a	n	a	a		a	n	a	a	n	a	n	n	n	n	n	n	a	n	a	a			a	a	a	a	
Case.....	a	n	a	a	a	n	a	a	a	n	a	a	n	a	n	a	a	a	n	n	a	a	a	a	a	a	a	n	a	a	a	a
Castleman.....	n	a	n	a	a	n	a	a	a	a	n	a	a	a	a	a		n	a	n	a	a	a	a	a	n	n	n	n	n	a	
Chase.....	n	n	n	n	n	n	a	a	n	n	a	n	n	n	n	a	a	a	n	a	n	n	n	a	a	a	a	n	n	a	a	n
Cole, Albert G.....				a	a	n	a	a	n	n	n	a	n		a	a	n	n	a	n				a	n	n	n	n	a	a	a	n
Cole, Orsamus.....	n	a	n	a	n	n	a	a	a	n	a	n	a	n	a	n	n	a	n	a	n		n	a	a	n	n	n	a	a	a	a
Colley.....	n	a	a	a	a	n	a	a	n	n	n	a	n	n	n	n	n	n	n	n	n		a	a	a	a	n	n	a	a	a	n
Cotton.....																																
Crandall.....	n	n	n	a	a	n	a	a	a	n	a	n	n	n	n	n	n	n	n	n	a	n	a	a	a	n	n	a	a	a	a	n
Davenport.....	n	n	a	n	n	n	a	a	n	n	a	n	a	n	n	a	a	a	a	a	a	n	a	a	a	a	n	n	a	a	a	n
Doran.....	a	n	n	n	n	n	a	a	a	a	n	a	n	n	n	n	n	n	n	n	n	a	a	a	a	n	n	n	n	n	n	n
Dunn.....	n	n	n	n	n	n	a	a	a	n	a	n	a	n	a	n	n	n	n	n	a	n	n	a	a	n	n	n	n	n	n	a
Estabrook.....	a	a	n	a	a	n	a	a	a	a	n	a	a	n	a	n	n	n	n	a	n		n	a	a		n	n		n	a	n
Fagan.....	a	a	n	a	a	a	a	a	a	a	n	a	a	n	n	n	n	n	n	n	a	n		n	a	a	a	n	n	n	n	n
Featherstonhaugh.....	n	n	n	n	n	a	a	a	a	n	a	n	a	n	a	n	n	n	n	n	a	a	n	a	a							a
Fenton.....	n	n	n	n	n	n	a	a	a	a	a	n	a	n	a	n	n	n	n	n	a	n	n	a	a	a	n	n	n	n	n	n
Fitzgerald.....	n	n	a	a	a	n	a	a	a	n	n	a	n	n	a	n	n	n	n	n	n	n		a	a	a	n	n	n	n	n	n
Folts.....	n	n	a	n	n	n	a	n	a	n	n	a	n	a	n	n	n	n	a	n	a	n	n	a	a	a	n	n	n	n	n	n
Foot.....	n	a	n	n	n	n	a	a	a	a	n	a	a	n	n	n	n	n	n	a	n	a	n	a	a	a	n	n	a	a	a	n
Fowler.....	n	a	a	n	n	n		a	n	n	a	a	n	n	n	a	a	a	n	a	n	n	a			a	a	n	n	n	n	n
Fox.....	a	a	a	n	n	a	n	a	a	a	n	a	n	n	a	n	n	n	n	a	n	n	n	a	a	a	n	n	n	n	n	n
Gale.....	n	a	n	a	a	n	a	a	a	n	a	n	a	n	n	n	n	n	a	n	a	a	a	a	a	n	n	n	a	a	a	n
Gifford.....	n	n	a	n	n	a	n	a	a	a	n	a	n		a	a	a	n	a	n	a	n	n	a	a	a	n	n	n	n	n	n
Harrington.....	a	n	a	a	a	n	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	a	n	a	a	n	n	n	n	n	a	a
Harvey.....		n	a	a	a	n	a	a			a	n	n	n	n	a	n	n	n	n			a	n	a	n	n	n	n	a	a	a
Hollenbeck.....	a	n		a	a	n	a	a	n	n	a	n	n	n		n	n	n	n	n	a	n			a	a	a	n	a	a	a	a
Jackson.....	a	a	a	n	n	n	a	a	n	n	n	a	a	n	n	a	a	n	n	n	n	n	n	a	n	n	n	n	n	n	n	n
Jones.....	a	n	a	a	a	n	a	a	a	a	n	a	n	n	n	a	a	n	a	n	a	n	a	n	n	n	n	n	n	n	n	n
Judd.....	n	n	n	a	n	a	n	a	n	a	n	n	n	n	n	n	n	n	n	n	a	n	a	a	a	a	n	n	n	n	n	n
Kennedy.....	n	n	n	n	n	a	n	a	a	n	n	a	n	n	n	n	n	n	n	n	n	n	a	a			n	n	n	n	n	n
Kilbourn.....	n	a	n	n	n	n		n	n	a	n	n	n	n	a	n	a	n	n	n	n											

MEMBERS	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211
King	n	a	n	a	a	n	a	a	a	n	n	a	n	n	n	a	a	n	n	n	a	a	n	a	a	n	n	a	a	a	a
Kinne	a	a	a	a	a	a	a	a	a	a	n	a	a	a	n	a	a	a	a	n	a	n	a	a	a	a	n	n	n	a	n
Lakin	n	a	n	a	a	n	a	a	a	a	n	a	n	n	a	n	a	a	n	a	n	a	n	a	a	a	n	n	a	a	a
Larkin	n	a	n	a	a	a	a	a	a	n	a	n	a	n	n	a	n	a	n	a	n	a	n	a	a	a	n	n	a	n	a
Larrabee	n	n	n	a	n	n	a	a	n	n	a	n	a	n	n	a	n	a	n	a	n	a	n	a	a	a	a	a	a	a	n
Latham	n	a	n	n	n	n	a	a	a	a	n	a	a	n	n	a	a	n	a	n	n	n	a	a	a	n	n	a	a	a	n
Lewis	a	n	a	n	n	a	a	a	a	n	a	a	a	n	n	a	a	a	n	a	n	n	a	a	a	a	n	a	a	a	n
Lovell	a	a	a	n	n	n	a	a	n	n	n	a	a	n	a	a	a	n	n	a	n	n	n	a	a	n	n	a	n	n	a
Lyman	n	n	n	a	a	n	a	a	n	n	a	n	a	n	n	n	n	n	a	a	n	n	n	a	a	n	n	a	n	n	a
McClellan	a	n	a	n	n	a	n	a	n	a	n	a	n	n	n	n	n	n	n	n	n	n	a	a	n	n	n	a	n	a	a
McDowell	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
Martin	a	a	a	n	n	a	a	a	a	n	n	a	a	n	n	a	a	a	n	n	n	n	a	a	n	a	n	n	n	a	n
Mulford	n	n	n	a	a	n	a	a	n	n	a	n	a	n	n	n	n	n	n	n	a	n	n	a	a	n	n	a	a	a	n
Nichols	n	n	n	n	n	a	n	a	a	n	a	a	n	n	n	a	n	n	n	n	n	n	n	a	a	n	n	n	n	a	n
O'Connor	n	n	n	n	n	a	n	a	a	a	a	n	n	n	n	n	n	n	n	n	n	n	n	a	a	a	n	n	n	a	n
Pentony	n	n	a	n	a	a	n	a	n	n	a	n	a	n	a	n	n	n	n	n	n	n	n	n	a	a	a	a	a	a	n
Prentiss	n	n	n	a	a	a	a	a	n	n	a	n	a	n	a	n	n	n	n	n	n	a	a	n	n	n	n	a	a	a	a
Ramsey	n	a	n	a	a	a	n	a	a	a	n	a	n	a	n	a	n	a	n	n	a	n	a	n	a	n	n	n	n	n	a
Reed	a	n	n	a	a	n	a	a	a	n	a	a	n	a	a	a	n	n	n	n	n	a	n	a	n	n	n	a	a	a	a
Reymert	n	a	a	n	a	n	a	a	n	n	a	n	a	n	n	n	n	n	n	n	n	a	n	a	n	a	n	n	a	a	a
Richardson	a	n	n	a	a	n	a	a	n	a	n	a	a	n	a	n	a	n	a	n	a	n	a	n	a	n	n	n	a	a	a
Root	n	n	n	n	n	n	a	a	a	n	a	a	a	a	n	a	n	a	n	a	n	n	n	a	a	a	n	n	a	a	n
Rountree	n	a	n	a	a	n	a	a	a	n	a	a	n	a	a	a	n	a	n	n	a	n	a	n	a	n	n	a	a	a	a
Sanders	a	n	a	a	a	n	a	a	n	n	a	n	a	n	n	a	a	n	n	a	n	a	n	n	a	a	n	n	n	n	n
Seagel	a	n	a	n	n	n	a	a	n	n	a	n	n	n	n	a	n	a	n	a	n	n	a	a	n	a	n	n	n	n	n
Schoeffler	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
Secor	a	n	a	a	a	a	a	a	n	n	a	n	a	n	n	a	a	a	n	a	n	n	a	a	a	a	n	n	a	a	n
Sedman	a	n	a	a	a	n	a	a	a	n	a	a	a	n	a	a	a	n	a	n	a	n	a	a	a	n	n	n	a	a	a
Turner	a	a	a	a	n	a	a	a	a	n	a	a	n	n	n	n	n	n	n	n	a	n	a	n	n	n	n	n	a	a	n
Vanderpoel	n	n	n	a	a	a	a	a	a	n	a	n	a	n	n	a	n	a	n	n	a	n	a	a	a	a	n	n	n	n	n
Ward	n	n	a	n	a	a	a	a	a	n	a	n	n	n	n	n	n	n	n	n	a	n	n	n	a	n	n	n	n	n	n
Warden	n	n	a	a	n	a	a	n	n	a	n	n	n	n	n	n	n	n	n	n	a	n	n	n	n	n	n	n	n	n	n
Wheeler	a	a	a	n	n	n	n	a	a	n	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n
Whiton	a	n	n	n	n	n	a	a	a	n	a	n	a	n	a	n	n	n	n	n	n	n	n	a	n	n	n	n	a	n	n

NUMBER OF ROLL CALL

MEMBERS	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	
King.....	n	n	a	a	a	a	n	n	n	a	n	a	a	a	a	a	a	a	a	n	a	n	n	a	n	n	n	a	a	a	a	
Kinne.....		a	n	a	a	a	n	n	n	a	n	a	a	n	a	a	n	n	n	n	a	n	n	n	n	n	n	n	n	a	a	a
Lakin.....	n	n	a	a		a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	
Larkin.....	n	n	n	a	n	n	n	n	a	n	n	n	a		a	a	a		a	n	n	n	n	a	n	a	a	a	n	a	a	
Larabee.....	n	n	n	a	n	a	n	n	n	n	a	n	a	a	n	a	a	n	a	a	n	a	a	n	n	n	n	n	a	n		a
Latham.....	n	n	n	n	n	a	n	a	a	a	n	n	a	n	a	a	a	a	a	n	a	n	a	n	n	n	n	n	a	n	a	a
Lewis.....	n	n	n	n	n	n	n	n	n	a	n	a	n	a		a	a	a	a	a	n	a	a	n	n	a	a	a	a	n	a	a
Lovell.....	n	a	n	a	n	n	n	n	a	a		n	n	a	a	a	a	a	a	a	a	n	n	a	a	a	a	n	a	n	a	a
Lyman.....	n	n	a	a	a	a	a	n	n	a	n	a	n	a	n	a	n	a	n	a	n	a	n	a	a	a	a	n	n	n	n	a
McClellan.....	n	n	n	a	n	a	n	a	a	a	n	a	a	a	n	a	n	a	a	a	n		n	a	a	a	a	a			a	a
McDowell.....																																
Martin.....	n	a	n	n	a	a	n	a	a	n	a	n	a		a	n	a	a	a	a	n	n	a	a	a	a	a	a	a	a	a	
Mulford.....	n	n	n	a	a	a	n	a	a	n	n	n		n	a	a	a	a	a	a	n	n	n	a	a		a		n	a	a	
Nichols.....	n	n	n	n	a				a	n	n		a																			
O'Connor.....	n	n	n	n	a	n	a	a	a	n	a	n	a	a		a	a	a	a	n	a	a	n	a	n	n	n	a	a	n	a	
Pentony.....	n	a	n	n	n	n	n	n	n	n	a	n	a	n	a	a	a	a	a	a	n	a	a	a	n	n	n	a	a	n	a	
Prentiss.....	n	n	n	a	a	n	n	n	n	n	n	n			a	n	a	a	a	n	a	n	a	n	a	a	a	a	a		a	a
Ramsey.....	n	n	a	a	a	a	a	n	n	a	n	a	a	n	a	n	a	a	n	n	a	n	a	n	n	n		n	a	n	a	
Reed.....	n	n	a	n	a	a	n	a	a	a		a	a		n	n	a	a	n	a	n	n	a	a	a	a	a	n	a	n		a
Reymert.....	n	n	n	a	a	a	n	n	n	n	n	a	a	n	a					a	n	n	a	a	a	a	a	a				
Richardson.....	n	a	a	a	a	a	n	n	n	n	a	a		n	n	a	n	n	n	n	n	a	n	n	n	n	n	n	n	n	a	a
Root.....	n	a	n	a	a	n	a	n	a	n	a	n	a	a	a	a	a	a	a	n	a	n	n	n	n	n	n	a	a	a	a	a
Rountree.....	n	n	a	n	a	a	a	n	n	a	n	n	a		n	n	a	a	a	n	a	n	n	n	n	n	n	n	n	n	a	a
Sanders.....	n		n	n	a	a		n	n	a	n	a	a	n	a	n	n	a	n	a	n	n	n	a	a	a	a		a	a	n	a
Scagel.....	n	a	n	n	n	a	a	a	a	a	n	a	a	n	a	a	a	a	a	a	n	a					n	n	n			
Schoeffler.....																																
Secor.....	n	n	n	n	a	a	a	n	n	a	n	a	a	n	a		n	a	a	n		n		a	n	a	n	a	a	a	a	a
Stedman.....	n	n	a	a	a	a	a	n	n	a	n	a	a	n	a	a	a	a	a	n	a	n	n	n	n	n	n	n	n	n	a	a
Turner.....	a	n	a	n	n	n	n	a	a	n	n	n	a	a	a	a	a	a	a	n	a	n	n	n	n	n	n	a	a	n	a	a
Vanderpoel.....	n	n	n	n	a	a	n	n	n	n	n	a	a	a	a	a	n	a	a	n	a	a	n	a	a	n	n	n	a	n	a	a
Ward.....	n	n	a	a	a		a	n	n	a	n	a	a		a	n	a	a	a	n	n	n	n				n					
Warden.....			a	a	a	a	n	n	a	n	a	n			n	a	n			a	n	n			a	n	n			a	a	a
Wheeler.....	n	n	n	n	n	n	n	n	a	n	a	n							a	a	n	n	n	a	a	n	a	a		a	a	a
Whiton.....	n	n	a	a	a	a	a	n	n	a	n	a	a	n	a	a	a	a	a	a		a	n	a	a	n	a	a	a	a	n	a

NUMBER OF ROLL CALL

MEMBERS	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238		240	241	242		
King.....	n	n	a	a	a	a	n	n	n	a	n	a	a	a	a	a	a	a	a	n	a	n	n	n	n	n	n	n	a	a	a	a	
Kline.....	a	n	a	a	a	a	n	n	n	a	n	a	a	n	a	n	n	a	n	a	n	n	n	n	n	n	n	n	a	n	a	a	
Lakin.....	n	n	a	a	a	n	n	n	n	n	n	n	n	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a	n	a	
Larkin.....	n	n	a	n	n	n	n	a	a	n	n	n	a	a	a	a	a	a	a	n	n	n	n	n	n	n	a	a	a	n	a	a	
Larrabee.....	n	n	n	a	n	a	n	n	n	a	n	a	a	n	a	a	n	a	a	n	a	a	n	a	n	n	n	a	a	n	a	a	
Latham.....	n	n	n	n	n	a	n	a	a	a	n	n	a	n	a	a	a	a	a	n	a	n	a	n	n	n	n	n	a	n	a	a	
Lewis.....	n	n	n	n	n	n	n	n	n	a	n	a	n	a	a	a	a	a	a	n	a	a	n	n	a	a	a	a	a	n	a	a	
Lovell.....	n	a	n	a	n	n	n	a	a	a	n	n	a	a	a	a	a	a	a	a	n	n	a	a	a	a	a	n	a	a	a	a	
Lyman.....	n	n	n	a	n	a	a	n	n	a	n	a	n	a	n	a	n	a	n	a	n	n	n	n	n	n	n	n	a	n	n	a	
McClellan.....	n	n	n	a	n	a	n	a	a	a	n	a	a	a	n	a	n	a	a	a	n	a	a	n	a	a	a	a	a	a	a	a	
McDowell.....																																	
Martin.....	n	a	n	n	a	a	n	a	a	n	a	n	a	a	n	a	a	a	a	n	n	a	a	a	a	a	a	a	a	a	a	a	
Mulford.....	n	n	n	a	a	a	n	a	a	n	n	n	n	n	a	a	a	a	a	n	n	n	n	n	a	a	a	a	n	a	a	a	
Nichols.....	n	n	n	n	a	n	n	a	n	n	n	n	a	a	a	a	a	a	a	n	a	a	n	a	n	n	n	n	a	a	n	a	
O'Connor.....	n	n	n	n	a	n	n	a	a	n	a	n	a	a	a	a	a	a	a	n	a	a	n	a	n	n	n	n	a	a	n	a	
Pentony.....	n	a	n	n	n	n	n	n	n	a	n	a	n	a	a	a	a	a	a	n	a	a	a	a	n	n	n	n	a	n	a	a	
Prentiss.....	n	n	n	a	a	n	n	n	n	n	n	n	n	a	a	n	a	a	a	n	n	n	n	n	n	a	a	a	a	n	a	a	
Ramsey.....	n	n	a	a	a	a	n	n	a	n	a	n	a	a	n	a	n	a	n	n	n	n	n	n	n	n	n	n	n	a	n	a	
Reed.....	n	n	a	n	a	a	n	a	a	a	a	a	a	a	n	n	n	a	n	n	n	n	n	n	a	a	a	n	a	n	a	a	
Reymert.....	n	n	n	a	a	a	n	n	n	n	n	a	a	n	a	a	a	a	a	n	n	n	n	n	n	n	n	n	a	a	n	a	
Richardson.....	n	a	a	a	a	a	n	n	n	n	n	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a	n	a	
Root.....	n	n	a	n	a	a	n	a	a	n	a	n	a	a	a	a	a	a	a	n	n	n	n	n	n	n	n	n	n	a	a	a	
Rountree.....	n	n	a	n	a	a	n	n	a	n	a	n	a	a	n	n	a	a	a	n	n	n	n	n	n	n	n	n	n	n	a	n	a
Sanders.....	n	n	n	n	a	a	n	n	n	n	a	a	a	n	a	n	n	n	n	n	n	n	n	n	a	a	a	a	a	n	a	a	
Scagel.....	n	a	n	n	n	a	a	a	a	a	n	a	a	n	a	a	a	a	a	n	a	a	n	a	n	a	n	n	n	n	n	a	
Schoeffler.....																																	
Secor.....	n	n	n	n	a	a	a	n	n	a	n	a	a	n	a	n	n	a	n	n	n	n	n	n	n	n	n	n	n	a	a	a	
Stedman.....	n	n	a	a	a	a	a	n	n	a	n	a	a	n	a	a	a	a	a	n	n	n	n	n	n	n	n	n	n	n	a	n	a
Turner.....	a	n	a	n	n	n	n	a	n	n	n	n	a	a	a	a	a	a	a	n	n	n	n	n	n	n	n	n	n	a	n	a	a
Vanderpoel.....	n	n	n	n	a	a	n	n	n	n	n	n	a	a	a	a	n	a	a	n	n	a	a	n	a	a	n	n	n	n	n	a	a
Ward.....	n	n	a	a	a	a	n	n	n	n	n	a	a	a	n	a	a	a	n	n	n	n	n	n	n	n	n	n	n	n	n	n	a
Warden.....																																	
Wheeler.....	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	n	
Whiton.....	n	n	a	a	a	a	a	n	n	a	n	a	a	n	a	a	a	a	a	a	n	n	a	n	a	n	a	a	a	n	n	n	a

script, preserved in the Society by his descendants, are an important source for Wisconsin history. He died December 10, 1897, after a life of well-spent service. Wis. Hist. Colls., vi, 289-294; Manuscript record.

APPENDIX II

BIOGRAPHICAL SKETCHES OF MEMBERS OF
CONVENTION OF 1847-1848

BROWN COUNTY

MORGAN LEWIS MARTIN wrote of the convention, "It was composed of a large majority of conservative men and my task was far from difficult." Nevertheless Wisconsin is indebted to him for his able conduct as president of this convention. Martin came to Wisconsin in 1827 while it was still a part of Michigan Territory; he aided in every step of its growth from a small fur-trading, French-Canadian community to a great American commonwealth. He was born March 31, 1805 at Martinsburgh, New York, son of General Walter Martin. In 1824 he graduated from Union College and began the study of law. Two years later he removed to Detroit, where he was admitted to the bar and whence the next spring he came to Green Bay and began practice. Martin was a member from 1831 to 1835 of the legislative council of Michigan. He early saw the promise of the region west of Lake Michigan and began to prepare for territorial government. After its establishment he was a member of the Wisconsin territorial council from 1838 to 1844. In September, 1845 he was elected territorial delegate to Congress and aided in the passage of the enabling act for Wisconsin. As president of the second constitutional convention he appointed all the committees, and he also took an important part in the debates. After the state was formed Martin devoted a large share of his attention to the Fox-Wisconsin Improvement work, for which in 1846 he had obtained a land grant from Congress. In 1866 the company established to conduct this work went into liquidation, carrying away much of Martin's personal fortune. He continued during all these years to render political service to the state and nation. In 1855 and again in 1874 he was a member of the assembly and in 1858 a state senator. During the Civil War he was paymaster with the rank of major; in 1866 he was chosen Indian agent for a term of three years; from 1875 to his death he was judge of Brown County. Judge Martin throughout life belonged to the Democratic party. He was, however, never narrowly partisan, and his integrity and probity were never questioned. He was a warm friend of the Wisconsin Historical Society and furnished for its collections many valuable reminiscences; a notable paper is in *Wisconsin Historical Collections*, xi, 385-415. His manuscripts, presented to the Society by his descendants, are an important source for Wisconsin history. He died December 10, 1887, after a life of well-spent service. *Wis. Hist. Colls.*, xi, 380-384; *Manuscript record*.

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CALUMET COUNTY

GEORGE WILLIAM FEATHERSTONHAUGH JR. was the son of a well-known English geologist, who came to the United States to make geological surveys in the West. The son was born in Albany, New York, about 1814; at the age of six he was sent to England for his education; he later attended West Point. He is said to have been at one time connected with the British legation at Washington. About the year 1839 he came to Wisconsin, where his father had made large land purchases in Calumet County. The younger Featherstonhaugh resided for a time at Fond du Lac, then built a palatial stone house on the eastern shore of Lake Winnebago. There he lived the life of a country gentleman and, when in Madison, was a man of elegance and dignity, highly respected by his colleagues. He usually voted with the Whigs of the convention. Featherstonhaugh was an early member of the State Historical Society and one of its first vice-presidents; he was also elected to the last territorial legislature. Soon thereafter he lost his property and removed to Milwaukee, where he lived precariously for many years, a literary hack, newspaper contributor, and a Bohemian. Colonel Featherstonhaugh was well known in the metropolis where his literary abilities found recognition. He was extremely eccentric in appearance and manner, and in spite of a fine education and early advantages he dissipated his powers. In his old age he went to live with relatives in Illinois, where he received a remittance from English sources. He died June 10, 1900, at Gurnee, Illinois. *Manuscript and newspaper records.*

COLUMBIA COUNTY

JAMES TAYLOR LEWIS, the ninth governor of Wisconsin, was a native of New York, where at Clarendon, Orleans County, he was born October 30, 1819, son of Shubael and Eleanor Robertson Lewis. Young Lewis was well educated; he attended Clarkson Academy and Clinton Seminary in western New York. He himself desired a collegiate course but was dissuaded by his father, who persuaded him to study law with Governor Selden at Clarkson. In 1840 Lewis visited the western states and was much pleased with conditions in Wisconsin. Five years later, after being admitted to the bar, he bought land at Columbus, and thereafter made it his home. He was in Madison when Portage County was separated from the present Columbia, and it was he who suggested the latter name for the remaining portion. Lewis in his new Wisconsin home was at once pressed into public service; he was chosen probate judge, district attorney, and court commissioner. In the convention, to which he was elected on the Democratic ticket, he was one of the youngest delegates; nevertheless he was appointed a member of the important committee on schedule and miscellaneous provisions, and spoke occasionally on the floor of the convention. He was elected in 1852 to the state assembly, the next year to the senate, and the same season was nominated for lieutenant governor on the Democratic ticket, which carried the state. During his term as lieutenant governor partisan politics were conducted with great bitterness; and several members of the administration were accused of graft and dishonesty. No such taint fell upon the lieutenant governor; he declined, however, being a candidate for a second

term and retired to private practice. Upon the commencement of the Civil War Lewis announced his full support of the federal government, and in 1861 received both the Republican and the Union party nominations for secretary of state. He was elected to this office by a large majority, having a unanimous vote in his home town. His office was so well conducted that he was elected in 1863 to the governorship, the last of the war governors of Wisconsin (1864-1866). During his term the war was won after great exertions for men and money on the part of the Northern states. In these efforts Governor Lewis coöperated with the federal authorities, while at the same time he introduced measures of wise economy in local affairs. He was instrumental in establishing homes for soldiers' orphans and in proposing measures of reconstruction after the dismissal of the troops. He refused a renomination for the governorship and retired to his home, where he lived until August 4, 1904. Governor Lewis was active in founding the Wisconsin Historical Society and always gave it his support. He was a vice-president for several years and a donor to the Society's collections. *Civil War Messages and Proclamations of Wisconsin's War Governors* (Historical Commission, Madison, 1912), 199-200.

CRAWFORD AND CHIPPEWA COUNTIES

DANIEL G. FENTON was originally from New Jersey, where at Trenton in January, 1812 he was born of Quaker parentage. He was educated in Pennsylvania and at the age of twenty-one was admitted to the bar. In 1836 he came to Wisconsin to practice his profession, first settling at Mineral Point, and then about 1840 removing to Prairie du Chien, where he was clerk of the court for nine years. In the convention he acted as an independent, belonging to neither of the two dominant parties. He had a clear grasp of constitutional requirements and aided materially the committee on the executive, legislative, and administrative provisions. In 1848 Fenton represented his district in the first state senate. The succeeding year he was chosen judge of the probate court for Crawford County and served until his untimely death at Prairie du Chien, August 11, 1851. *Manuscript record.*

DANE COUNTY

WILLIAM HERRIMON FOX was born in Westmeath County, Ireland, September 14, 1814, the son of the Reverend William and Eleanor Lynn Fox. The younger William was educated by private tutors and in select schools until in 1833 the family removed to America, settling first in northern Ohio. There the subject of this sketch continued his education, graduating in 1838 from Willoughby University and the next year taking his degree as doctor of medicine. The same year he began practice at Lima, Indiana, whence in 1842 Dr. Fox removed to Dane County and bought government land in what is now the town of Fitchburg. From this home, Dr. Fox practiced medicine throughout southern Dane County. He was also chosen treasurer of the defunct town of Rome and held several other local offices. In 1847 he was elected as a Democrat to the second constitutional convention; in that body he served on the committee on general provisions, including boundaries, suffrage, internal

improvements, etc. The suffrage provision of our state constitution is said to have been prepared by him. Dr. Fox passed the remainder of his life on his farm in Dane County. He was much interested in the development of agriculture and promoted its interests in his neighborhood; but his time was chiefly given to the practice of his profession, in which he achieved a creditable reputation. His home was a hospitable one, and his practice enabled him to aid many people in want of help. Generous and kindly, he was universally beloved throughout Dane County, and on his death, October 20, 1883, all the community mourned. *Manuscript record.*

CHARLES M. NICHOLS was born in 1800 in Albany, New York. When a young man he lived in Chenango County, whence in 1845 he removed to Wisconsin Territory and settled at Cottage Grove. Having been liberally educated, he was employed as a teacher. He was popular with the farmers of his vicinity, and it was their vote which elected him to the convention. Early in the fifties Nichols accompanied his sons to Onalaska, La Crosse County, where they had a lumbering establishment. In 1854-1855 he was county superintendent of schools and in 1869 chairman of the board of supervisors. He died during his incumbency of the latter office. In the convention Mr. Nichols was not on any of the standing committees; he voted, however, with the Democrats. *Manuscript and printed records.*

WILLIAM A. WHEELER was born October 3, 1814 in Fairfield County, Connecticut. He was educated in the common schools, attending also for a time a select school. His taste for mechanics was strongly marked and he became an expert mechanic and millwright. While young he went to Rochester, New York, and later to Erie County of the same state to build and operate mills. In 1837 Wheeler came to Wisconsin Territory and in the early autumn made his way to Madison, where work on the first capitol was just beginning. He built a steam sawmill on Lake Mendota, at which most of the lumber for the capitol was prepared. Thereafter Wheeler made Madison and its environs his permanent home. At the first election in 1839 he was chosen assessor; in 1847 he was county commissioner and the same year a member of the territorial legislature. Probably because of this office he was nominated and elected to the constitutional convention as a Democrat; he was known as a useful, quiet member of that body. In 1854 Wheeler was county treasurer. During the war he raised a local militia company known as the "Harvey Guards," and in 1863 was appointed captain in the commissary service and was stationed at Cumberland Gap when Lee's army surrendered. He was brevetted major and mustered out August 10, 1865. Major Wheeler then returned to his home in Wisconsin. His later years were spent chiefly at Middleton, where he died May 4, 1881. *Manuscript and printed records.*

DODGE COUNTY

STODDARD JUDD was a member of the first constitutional convention. For his biographical sketch, see *Wis. Hist. Colls.*, xxvii (Constitutional Series, ii), 780.

CHARLES HATHAWAY LARRABEE was one of the most versatile and brilliant men in the constitutional convention. He led an active life, full of vicissitude and energy, and served both the nation and the state with ability and efficiency. He was a native of New York, having been born at Rome, November 9, 1820. His father was an officer in the regular army, and a veteran of the War of 1812. When the younger Larrabee was five years old, his father resigned from the army and went to live in Ohio. There Charles was educated at Springfield Academy and Granville University. At the latter institution he met Lyman C. Draper, and the two became lifelong friends. After graduation young Larrabee began the study of law at Springfield; his health failing, he and Draper went in 1841 to Pontotoc, Mississippi, built a cabin, and lived upon the land. There Larrabee completed his legal studies, and was admitted to the bar. Both the young men soon left Mississippi to meet again several years later in Wisconsin. Meanwhile Larrabee sojourned for a time at Chicago, where he did editorial work on the *Democratic Advocate*, and in 1844 was elected city attorney. In March, 1847 Larrabee settled in Wisconsin, founding the village of Horicon in Dodge County. He received the unanimous vote of his town for delegate to the constitutional convention, in which he was one of the youngest members. None the less he was prominent in the debate, serving on the committee on general provisions, advocating homestead exemption, and opposing a state debt for internal improvements. Larrabee's abilities were quickly recognized, and in July, 1848 he was elected judge of the third circuit, a position he held for ten years. His legal acumen was appreciated and his fairness and love of justice made him a popular judge. In 1852 he was candidate for chief justice but failed of election. In 1853 he persuaded the members of the State Historical Society, in which he took a warm interest and which he was largely instrumental in founding, to invite his friend Draper to become its secretary. In 1858 Judge Larrabee was elected to Congress, but failed of reelection two years later because he was a Douglas Democrat. The day after the firing upon Sumter, however, he offered his services to the government. He enlisted as a private in the Horicon Guards, was soon elected lieutenant by his comrades, and within a few days was commissioned by the governor, major of the Fifth Wisconsin. Major Larrabee served through the Peninsular campaign; August 22, 1862 he was commissioned colonel of the Twenty-fourth Wisconsin, a regiment he did much to raise. After service in the western army, Colonel Larrabee was forced by ill health to resign on August 27, 1863. The next year he sought California in search of relief. He lived for a time at San Jose, then tried the climate at Portland, Oregon. For several years Colonel Larrabee was domiciled at Seattle; from there he went in 1878 as one of the sixteen members who met at Walla Walla to prepare a constitution for Washington; Congress, however, at this time refused to admit Washington as a state into the Union. Colonel Larrabee was for a time regent of the University of Washington. He finally returned to California where in a railway accident near San Bernadino he was killed January 20, 1883. *Wis. Hist. Colls.*, ix, 366-388.

SAMUEL WATSON LYMAN was one of the older members of the convention, having been born November 13, 1797 at Hockanum, Massachusetts. He served in the War of 1812 and later was a major of Massachusetts militia.

Major Lyman migrated in 1845 to Wisconsin and the following year made his home at Hustisford, Dodge County. There as a Democrat he was chosen to several local offices and to the constitutional convention, in whose work he had an inconspicuous share. After the sessions of the convention, failing health made him decline all public service. He died May 27, 1856. *Manuscript record.*

FOND DU LAC COUNTY

SAMUEL WOOTTEN BEALL served in the first convention as a member for Marquette County. In the second convention he represented Taycheedah. For his biography, see *Wis. Hist. Colls.*, xxvii (Constitutional Series, ii), 759-760.

WARREN CHASE, founder of the Ceresco coöperative community at Ripon, was a member of the first constitutional convention. For his biography, see *Wis. Hist. Colls.*, xxvii (Constitutional Series, ii), 765-766.

GRANT COUNTY

ORSAMUS COLE. The Cole family was originally from Rhode Island, where the grandfather of Orsamus served in the Revolution; his maternal grandfather was also a patriot soldier. His father, Hymeneus Cole, early in the nineteenth century removed to New York; and at Cazenovia on August 23, 1819 the subject of this sketch was born. He was brought up on a farm, studied in the common schools of Oswego County, in Clinton County Institute, and in Black River academy. He finished his academic work at Union College, where he graduated in 1843. He then studied law at Belleville, New York, and after admission to the bar in 1845 he started for the West, and spent a few months in Chicago. Then in the autumn of the same year he removed to Potosi, Grant County, Wisconsin, where he entered into a law partnership with William R. Biddlecome. The junior partner of this firm was chosen on the Whig ticket to the second constitutional convention. Although one of its youngest members, Cole had much influence in framing the constitution he was later to interpret. Soon after the convention closed he was nominated, without his knowledge, Whig candidate for Congress in the second district, was elected over the Democratic and Free-Soil candidates, and took his seat in the Congress that passed the Fugitive Slave Law. It is said that Zachary Taylor, Whig president, remarked to Congressman Cole, "Were I from your section, I would vote for the Wilmot Proviso." Cole during his congressional career voted consistently with the antislavery party. In 1850 he was renominated for Congress but was defeated by Ben C. Eastman. In 1853 Cole was Whig candidate upon the state ticket for attorney-general, when he was again defeated. Meanwhile the Republican party was organized, and in 1855 Orsamus Cole was nominated as its candidate for the state supreme court and triumphantly elected. He served upon the bench for thirty-seven years, being chief justice from 1880 until his voluntary retirement in 1892. Judge Cole was a clear thinker and a strong upholder of popular sovereignty. Upon the bench he was weighty and careful rather than brilliant; but his opinions were well reasoned and for the most part stand the test of time. After his retirement he lived in

Milwaukee with an only son, at whose home he died May 5, 1903. John B. Winslow, *The Story of a Great Court*, 82-85.

GEORGE W. LAKIN was born in Cumberland County, Maine, March 29, 1817. Until he was thirteen he lived upon a farm and went to district schools; in his fourteenth year he attended Bridgton Academy; the next year (1832) he entered Wesleyan Seminary at Readfield. There young Lakin remained for five years, teaching school during vacations to eke out his income. At one time he taught in Livermore and lived with the family of Israel Washburn. At Readfield Lakin pursued a classical course and took high rank. In the spring of 1838 he began reading law at Readfield Center; in August he went to Phillips to enter the office of Mr. Sherburne. Eager to see more of the country, young Lakin came West in the autumn of 1839 and entered the law office of John Scott, a famous advocate at Ste. Genevieve, Missouri. There he remained until in June, 1841 he was admitted to the bar at the circuit court of Perry County. A letter from E. B. Washburne, then of Galena, turned the young lawyer's attention to Wisconsin; in October, 1841 he came from Missouri and settled at Platteville, Grant County, where he soon acquired a reputation and a good practice. The first political office to which he was chosen was that of delegate to the second constitutional convention, where he came as a Whig with strong Whig principles. He was a member of the committee on banks and corporations; his opinions on the judiciary likewise had weight. Lakin, although but thirty-one at the time of the convention, was listened to by his colleagues with attention; his highly cultivated, quiet manner, rich voice, and deliberation added weight to his words. The year the convention closed its sessions Lakin was elected to the senate of the new state (1849-1851); upon the election of Zachary Taylor in 1849 he was appointed United States district attorney for Wisconsin and was recommissioned in 1850 for four years. At the expiration of his term of office he removed to Milwaukee and continued practice, later taking his son Charles into partnership. At his death, September 13, 1884, Lakin was one of the honored members of the bar of the metropolis. *Manuscript record.*

ALEXANDER DINWIDDIE RAMSEY, a descendant of well-known Virginians, was born November 28, 1803 in Kentucky. When a young man of twenty-two he was attracted to the lead mines, where he made his first home at Dubuque, whence two years later he removed across the river to the neighborhood of Cassville. There Ramsey joined the settlement of Orris McCartney, who afterwards became his brother-in-law. Ramsey was in the Winnebago War of 1827 and the Black Hawk War of 1832. In his house were held the first church service and the first school in the Cassville region. He lived on his home farm for over fifty years. In the convention, to which he was elected as a Whig, he made no speeches, but gave his associates the benefit of his judgment in public affairs. He died July 17, 1878, soon after the thirtieth reunion of his constitutional convention associates. *Manuscript record.*

WILLIAM RICHARDSON came to the convention from the extreme southwestern corner of Wisconsin, representing Jamestown as a Whig. He was born April 20, 1807 at Circleville, Ohio, grew up on a farm, and in 1838 came to

Wisconsin, where he became a farmer at Fairplay. He represented his district in the assembly of 1852, wherein he was appointed commissioner on the Fox-Wisconsin Improvement enterprise. Shortly after this he left Grant County, residing for a time at Madison. About 1862 Richardson removed to Oil City in Ontario, Canada, and there spent over twelve years. In 1875 he took his family to Niles, Michigan, and there December 14 of the same year he died. Although he took no conspicuous part in the constitutional convention, he was respected by his neighbors for his sterling qualities and good judgment. *Manuscript record.*

JOHN HAWKINS ROUNTREE was a pioneer of the pioneers. His ancestors came from Ireland to Virginia early in the eighteenth century. Late in the same century his father John removed to Warren County, Kentucky, near Mammoth Cave, where John Hawkins was born March 24, 1805. He grew up in Kentucky with a meager education, but showing much native ability. In 1824 he removed to Hillsboro, Illinois, whither his brother Hiram had preceded him. There John Rountree was soon appointed deputy sheriff and upon his majority in 1826, sheriff of the county. Governor Coles likewise commissioned him major of militia; from this office he was called Major Rountree during all his life. In 1827 the young man first came to the lead mines of Wisconsin's southern border. After the Winnebago disturbance of that summer had subsided Major Rountree purchased a claim on the site of Platteville and began mining. For the first few months he and his men lived in tents; by August, 1828 he had built a log cabin, to which he brought his bride, Grace Mitchell, from Galena. Major Rountree was one of Wisconsin's earliest smelters and furnace builders; his business prospered greatly. In 1829 he was first postmaster for Platteville; in 1830 was appointed justice of the peace. During the Black Hawk War he raised a company and took active part in the defense of the lead regions. When Wisconsin Territory was organized Major Rountree was elected to the legislative council, wherein he served for eight years; he was likewise probate judge of Grant County and in 1839 colonel of militia. He was elected to the constitutional convention as a Whig and served on the committee on general provisions. Upon the organization of the state he was chosen regent of the University (1848-1851); was in the senate in 1850-1851 and 1866-1867, and in the assembly in 1863. In 1853 he was appointed major general of militia. About 1852 Major Rountree left the Whig party and became a Free-Soil Democrat; in 1861 he adhered to the Union and soon became a Republican. He was a patron of education and a founder of Platteville Normal School. As one of the early members of the Historical Society and for years a vice-president, he took great interest in its growth. In 1857 Major Rountree was one of the first trustees of the Northwestern Mutual Life Insurance Company and remained so until his death. He lived in his Platteville home to the ripe age of eighty-five years, passing away June 27, 1890. He maintained an active interest in the Methodist Episcopal Church, of which his brothers-in-law were pioneer ministers. In all matters of progress and uplift for the community Major Rountree's influence was potent; he was held in high esteem by the entire state, and recognized as a citizen of great worth and probity. *Manuscript and printed records.*

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JOHN HAWKINS ROUTTAGE was a pioneer of the pioneers. His ancestors came from Ireland to Virginia early in the eighteenth century. Late in the same century his father John removed to Warren County, Kentucky, near Mammoth Cave, where John Routtage was born March 24, 1802. He grew up in Kentucky with a meager education, but showing much native ability. In 1824 he removed to Hillsboro, Illinois, where his brother Hiram had preceded him. There John Routtage was soon appointed deputy sheriff and upon his majority in 1826, sheriff of the county. Governor John Hawkins commissioned him major of militia; from this office he was called Major Routtage during all his life. In 1827 the young man first came to the lead mines of Wisconsin's northern border. After the Winnebago disturbance of that summer had subsided Major Routtage purchased a claim on the site of Fittsville and began mining. For the first few months he and his men lived in tents; by August, 1828 he had built a log cabin, to which he brought his wife, Grace Mitchell, from Galena. Major Routtage was one of Wisconsin's earliest miners and furriers; his business prospered rapidly. In 1829 he was first postmaster for Fittsville; in 1830 was appointed justice of the peace. During the Black Hawk War he raised a company and took active part in the defense of the lead regions. When Wisconsin Territory was organized, Major Routtage was elected to the legislative council, wherein he served for eight years; he was likewise probate judge of Grant County and in 1839 colonel of militia. He was elected to the constitutional convention as a Whig and served on the committee on general provisions. Upon the organization of the state he was elected regent of the University (1848-1851); was in the senate in 1850, 1851 and 1852-1853, and in the assembly in 1853. In 1853 he was appointed major general of militia. About 1852 Major Routtage left the Whig party and became a Free-Soil Democrat; in 1861 he adhered to the Union and soon became a Republican. He was a patron of education and a founder of Fittsville Normal School. As one of the early members of the Historical Society and for years a vice-president, he took great interest in its growth. In 1850 Major Routtage was one of the first trustees of the Northwestern Mutual Life Insurance Company and remained so until his death. He lived in his Fittsville home to the ripe age of eighty-five years, passing away June 27, 1890. He maintained an active interest in the Methodist Episcopal Church, of which his brothers-in-law were pioneer ministers. In all matters of progress and uplift the community Major Routtage's influence was potent; he was held in high esteem by the entire state, and recognized as a citizen of great worth and growth. Manuscript and printed records.

GREEN COUNTY

JAMES BIGGS belonged to a well-known family of western pioneers. Originally from Maryland, they removed about 1770 over the Alleghenies and finally settled on the waters of Short Creek above Wheeling, in West Virginia. One of James Bigg's uncles was killed in 1782 in Crawford's defeat; another, an officer in the Revolution, was at one time in command of Fort Henry at Wheeling. James's father, Zaccheus Biggs, migrated after the Treaty of Greenville (1795) to the Northwest Territory; there, near Chillicothe, Ohio, James was born November 16, 1799. His mother died when the boy was six years old; and soon thereafter the family went to live in Cincinnati. James was educated in that city and at Washington College, Pennsylvania. He came to Wisconsin in December, 1829, having secured a contract for surveying land. His surveys were in townships three to six, ranges four to nine east in the present Green and Lafayette counties. While surveying Biggs made his headquarters at Colonel William S. Hamilton's place at Wiota, where he was one of the defenders of a block fort during the Black Hawk War. The next year he staked out diggings in township three, range six, which became his future home; in the fall of 1833 he returned to Ohio and the next spring brought his family to Wisconsin; he was then the first permanent settler in Adams Township, Green County. He held several local offices; at one time he was county superintendent of schools, the local school being held in his own home. He was also officer in the local militia, and was usually addressed as General Biggs. When a post office was established in his town, called Walnut Springs, he was appointed postmaster and held the office twenty-three years; the post office at this place is now discontinued. General Biggs was elected to the second constitutional convention from Green County on the Whig ticket. Because of ill health he had an inconspicuous part in the proceedings. He never held another political office, but lived on his home farm until his death June 27, 1870. *Manuscript record.*

WILLIAM McDOWELL, son of William and Rachel McClintock McDowell, was born at Newtown (now Stephens City), Frederick County, Virginia, March 27, 1805. When the boy was two years of age the family removed to Chillicothe, Ohio, where the father became a merchant and farmer. Young McDowell received an academic education and in his eighteenth year began the study of medicine at Portsmouth, Ohio. He did not, however, persevere in this profession, having been by turns farmer, lumber dealer, manufacturer, and merchant. In 1842 McDowell brought his family by steamboat on the Ohio and Mississippi rivers to northern Illinois, whither his wife's family had preceded him. He then bought land in Clarno, Green County, Wisconsin Territory, where he made his permanent home. McDowell was an intelligent, well-read man of emphatic opinions. He held many local offices on school and town boards and during the Civil War was county treasurer. He was elected to the convention as a Whig and served on the committee on general provisions. Later he became a Republican, and in 1884 a Greenbacker. He lived to a great age, the latter years of which were passed in Monroe, where he died April 17, 1895. *Manuscript and printed records.*

IOWA AND RICHLAND COUNTIES

CHARLES BISHOP was born near Walton, Delaware County, New York, June 14, 1819. When about fourteen he removed with his father's family to a farm near Norwalk, Ohio. From there he went to Western Reserve College and after graduation in the same class with President Hayes he entered Harvard Law School, completing his course in 1845. Soon thereafter Bishop came to Wisconsin and began the practice of law at Mineral Point. He was elected from Iowa County to the second constitutional convention as a Democrat, and served on the standing committee on banks and banking. About 1850 Bishop returned to Ohio and entered at Norwalk the law firm of Latimer and Bishop; his residence was, however, at Bowling Green in Wood County. In 1882 he retired from active practice and thereafter made his home in Cortland, New York, where after many years of quiet life, occupied with travel, reading, and family interests, he passed away July 8, 1893. *Manuscript record.*

STEPHEN P. HOLLENBECK, son of Abram and Abigail Bronson Hollenbeck, was born March 28, 1801 at Richmond, Chittenden County, Vermont. He was brought up on a farm and learned the trade of millwright. In 1834 he removed from Highgate, Franklin County, Vermont, to Mineral Point, Wisconsin, and made his residence in Iowa County until 1863. As a member of the local militia Hollenbeck was sent in 1840 to Richland County to aid in the removal of nearly a hundred recalcitrant Winnebago Indians, when he succeeded in persuading them to surrender, and delivered over the redmen to a captain of the regular army. For this hazardous service Governor Dodge had a special remuneration voted to Hollenbeck. He held several local offices and in 1855 represented Highland in the state assembly. He was one of the Whigs elected to the convention from southwest Wisconsin, defeating for that office the Democratic candidate, Francis Dunn, brother of Judge Dunn. In the convention Hollenbeck was a quiet, hard-working member. After the Civil War he removed to Green Lake County, whence during the latter years of his life he went to Concord, Dodge County, Minnesota, to make his home with his daughter; there he died March 26, 1895, two days before his ninety-fourth birthday. *Manuscript record.*

JOSEPH WARD was born January 24, 1803 at Amsterdam, Montgomery County, New York. At twenty years of age he came to Detroit, Michigan, then a pioneer settlement, and five years later removed to Milwaukee, where he was a prominent merchant. In 1845 he went to live at Dodgeville, where he married a widowed daughter of Governor Dodge. Ward was elected to the convention from Iowa County and served on the committee on schedule and miscellaneous provisions. He was widely and favorably known throughout Wisconsin, especially among the Whigs, with whose politics he agreed. Early in 1852 Mr. Ward returned to Milwaukee, almost immediately leaving for California. There in July, 1852 he died at Marysville. *Manuscript record.*

JEFFERSON COUNTY

JONAS FOLTS, son of John and Catherine Folts, was born March 12, 1808 at Herkimer, Herkimer County, New York. He was brought up on a farm, educated at Fairfield Academy, and in 1828 went to Oneida, where for seven years he worked as a bookkeeper. Early in 1835 Jonas Folts came West in company with Elisha W. Edgerton. The former entered the employ of George W. Dole at Chicago; after three months he sought the new town of Milwaukee, bought some lots on East Water Street, and thence set out to explore the Rock River country. By September he was ready to return to his New York home, where the next month he married and in the spring of 1836 brought his wife to Milwaukee. There they built a house, but in the autumn of that year removed to the Talbot Dousman settlement at Summit, in the later Waukesha County. There Folts lived on a farm for five years and held several local offices. In 1841 he returned to New York State to live; two years later, however, he came back to Wisconsin and settled at Hebron in Jefferson County. There Folts was register of deeds 1846-1847, town and county clerk, and justice of the peace for many years. He was elected to the constitutional convention on the Democratic ticket. After service therein he did not again hold a state office until 1868, when he represented his district in the assembly. He died at his home in Hebron, June 24, 1876. *Manuscript record.*

MILO JONES was one of the best-known pioneers of Wisconsin. The son of Edward and Lucy Farnsworth Jones, he was born February 16, 1809 at Richmond, Vermont, sixteen miles from Burlington. Young Jones was so eager for an education that he walked daily to the latter place for instruction; later he entered a surveyor's office, whence in 1832 he came West in search of employment. For a year or two he surveyed in Michigan; in 1834 he secured a contract for surveying several townships in Wisconsin, when he laid out the streets for Milwaukee village. In 1835 he made an expedition westward to Rock River to examine lands and entered at the land office, as soon as it was opened, seven hundred acres on the site of Fort Atkinson. Thither in 1838, after surveying a season in Iowa, Milo Jones brought his family from Vermont; there he passed a long and useful life, promoting the good of the community and developing agriculture and stock raising. About 1840 the Indians in the neighborhood appeared troublesome; Jones was appointed by Governor Dodge aide-de-camp, and took charge of the deportation of the tribesmen. In 1849 he opened the Green Mountain House at Fort Atkinson, where he was postmaster in the fifties, president of the village, and first mayor of the city in 1878. In early years Jones was a Democrat; as such he represented Jefferson County in the constitutional convention. During the Civil War he became a Republican, but late in life reverted to the Democratic party. He was an early director of the Chicago and Northwestern Railway and always a progressive agriculturist. He died November 17, 1893 on the land he had bought from the government nearly sixty years before, having contributed greatly to the progress of the city of Fort Atkinson. *Manuscript record.*

THEODORE PRENTISS was a member of the first constitutional convention. For a biographical sketch, see *Wis. Hist. Colls.*, xxvii (Constitutional Series, ii), 787.

ABRAM VANDERPOEL, of Dutch ancestry, was born April 1, 1806 at New Canaan, Columbia County, New York. He grew up on a farm, was married in 1825, and three years later removed to Oswego County, New York, where he cleared land for a large farm and where he lived for ten years. In 1838 Vanderpoel determined to seek a new home in Wisconsin Territory; he brought his family, arriving June 11, 1838 at Jefferson. There he remained for two years, when he removed to Waterloo, Jefferson County, whence he was elected as a Democrat to the constitutional convention. In the convention he served on the committee on education and school funds, speaking occasionally with vigor and proving a good working delegate. In 1850 Vanderpoel was an assemblyman from Waterloo; he also served for a time as chairman of the county board of supervisors. In 1858 he again removed to a newer country, opening a farm at Newport, Columbia County, on the Wisconsin River just below Kilbourn. When the Civil War began Vanderpoel, although far beyond the military age, volunteered and recruited a company. October 3, 1861 he was commissioned captain of the Wisconsin River Rifles that rendezvoused at Delton in Sauk County. During the enlistment period Captain Vanderpoel spoke frequently with much effect at war meetings. His was an impulsive nature and he was noted for the vigor and eloquence of his speeches. The company reached Camp Randall, November 1, and was sworn into service as Company E of the Twelfth Wisconsin Regiment. January 11, 1862 the men entrained for Weston, Missouri, whence they were ordered to Fort Leavenworth and then to Fort Scott in Kansas. Captain Vanderpoel and his wife accompanied them and were father and mother to the boys of Company E. Early in May the regiment received orders for a long march, whereupon Captain Vanderpoel, upon whose health the fatigues of camp life told heavily, felt obliged to resign. He returned to his Wisconsin home but never recovered from his war-time experiences. In August, 1874 he visited a sanitarium at Fond du Lac in search of relief; there September 28 he passed away. *Story of the Service of Company E of the Twelfth Wisconsin Regiment* (Milwaukee, 1893), 495.

LAFAYETTE COUNTY

CHARLES DUNN. Morgan L. Martin said of Judge Dunn that he was the strongest man intellectually in the second constitutional convention. Although but forty-eight years of age when the convention met, he had already had a distinguished career and was one of the most highly respected men of the territory. He was born December 28, 1799, at Bullitt's Lick, Kentucky, a few miles from Louisville. His father was an Irish gentleman of ample means, while his mother, Amy Burks, was a Virginian. Charles was the eldest son and in 1809 went to Louisville to be educated. He later studied law with Wordon Pope and with his brother, John Pope, of Transylvania University. Young Dunn was opposed to the system of slavery and in 1819 he left Kentucky for Kaskaskia, Illinois, where he completed his legal studies

THOMAS PRATT was a member of the first constitutional convention. For a biographical sketch, see Wis. Hist. Coll., xxvii (Constitutional Series, II), 787.

ABRAHAM VANDERPOOL, of Dutch ancestry, was born April 1, 1808 at New Canaan, Columbia County, New York. He grew up on a farm, was married in 1832, and three years later removed to Oswego County, New York, where he cleared land for a large farm and where he lived for ten years. In 1838 Vanderpool determined to seek a new home in Wisconsin Territory; he brought his family, arriving June 11, 1838 at Jefferson. There he remained for two years, when he removed to Waterville, Jefferson County, whence he was elected as a Democrat to the constitutional convention. In the convention he served on the committee on education and school funds, speaking occasionally with vigor and giving a good working delegate. In 1850 Vanderpool was an assemblyman from Waterville; he also served for a time as chairman of the county board of supervisors. In 1852 he again removed to a newer country, opening a farm at Newport, Columbia County, on the Wisconsin River just below Hillbourn. When the Civil War began Vanderpool, although far beyond the military age, volunteered and recruited a company. October 2, 1861 he was commissioned captain of the Wisconsin River Rifles that rendezvoused at Delton in Sauk County. During the enlistment period Captain Vanderpool spoke frequently with much effect at war meetings. His was an impulsive nature and he was noted for the vigor and eloquence of his speeches. The company reached Camp Randall, November 1, and was sworn into service as Company E of the Twelfth Wisconsin Regiment. January 11, 1862 the regiment embarked for Westport, Missouri, thence by rail to Fort Leno, Iowa, and then to Fort Scott in Kansas. Captain Vanderpool and his wife accompanied them and were father and mother to the boys of Company E. Early in May the regiment received orders for a long march, which Captain Vanderpool, upon whose health the fatigue of camp life told heavily, felt obliged to resign. He returned to his Wisconsin home but never recovered from his war-time experiences. In August 1871 he visited a son-in-law at Fond du Lac in search of relief; there September 22 he passed away. Story of the Service of Company E of the Twelfth Wisconsin Regiment (Milwaukee, 1893), 402.

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under Nathaniel Pope. In 1820 Dunn was admitted to the bar; the next year he married and settled at Jonesborough to engage in practice; he also lived for some time at Golconda, Illinois. In 1829 he was appointed Illinois canal commissioner and assisted in laying out the first plat of Chicago, where he superintended the sale of lands. During the Black Hawk War (1832) he recruited a company and advanced into Wisconsin, when he was dangerously wounded by a blundering sentinel. Upon the organization of Wisconsin Territory, Charles Dunn, who had recently acted as chairman of the judiciary committee in the Illinois assembly, was appointed by President Jackson chief justice of the new territory. He served on the bench throughout the entire territorial period. He was elected as a Democrat to the second constitutional convention, wherein he was chairman of the committee on the judiciary; he was largely influential in preparing the judicial provisions of our present constitution. After the convention Judge Dunn was an unsuccessful candidate for United States Senator and then retired to private practice. In 1853 he was elected to the senate and was reëlected for a second term, serving through four years as chairman of the judiciary committee. In 1856 he was defeated for Congress by C. C. Washburn. Throughout his career Judge Dunn remained a Democrat but did not support the cause of slavery. He was the owner of the site of the first territorial capitol at Belmont, where he made his home for many years. He was a man of great popularity and hospitality, and his house was the center of social life. His only daughter became the wife of Nelson Dewey, first governor of the state. Winslow, *Story of a Great Court*, 33-36; *Manuscript record*.

JOHN O'CONNOR, born October 16, 1814 in Bedford County, Pennsylvania, was elected to the convention on the Democratic ticket from Shullsburg. O'Connor was a newcomer to Wisconsin, having migrated in 1846 from Pennsylvania. All that is known of his early life is his employment by the canal commissioners of his native state on the Portage Railway over the Alleghenies at Hollidaysburg. At Shullsburg he was a merchant; there he died March 29, 1854. Tenney and Atwood, *Memorial Record*, 246-247.

ALLEN WARDEN was born April 8, 1821 at Victory, Cayuga County, New York. He received an excellent academic education at Auburn, Darien, and Elmira in his native state. From the last-named place, where he had been a merchant, he came in 1842 to Wisconsin and bought a large tract of land at Cross Plains just west of Madison. He soon disposed of this investment and went to Wiota in Lafayette County, then a considerable mining community. Here he entered into partnership with John Z. Saxton of Argyle in a merchandising business. When delegates were to be elected for the second constitutional convention W. S. Hamilton of Wiota, son of Alexander Hamilton, was candidate for western Lafayette County. Allen Warden was put up by the Democrats and defeated Colonel Hamilton by forty-six votes. In the convention he served on the committee on education and school funds. In 1849 Warden removed to Beloit, where he was chairman of the village and postmaster from 1852 to 1856. At the close of his term of office he became a resident of Darlington, where he was in the flour business for several years.

Warden before the Civil War was a Douglas Democrat; he became, however, a follower of Lincoln and was presidential elector at his second election, and also one for Grant in 1868. In both campaigns Warden was a prominent campaign speaker. In 1872 he supported Greeley, and was himself a Democratic candidate for Congress but was defeated. In 1875 because of his wife's health he determined to remove to a milder climate. Having settled at Lamar, Barton County, Missouri, he became mayor of the town and judge of the county court. There Judge Warden passed the remainder of his life, dying March 11, 1897. *Manuscript and printed records.*

MILWAUKEE COUNTY

JOHN L. DORAN was born in 1814 in Ireland, where he grew up and was educated for the bar. In 1844 he emigrated to America and settled at Milwaukee, where in 1847 he was elected city attorney. He represented Milwaukee as a Democrat in the constitutional convention, serving on the committee on schedule and miscellaneous provisions. Doran was frank, genial, highly cultivated, and very popular with his Irish-American fellow-citizens. In 1851 he served in the state assembly. During the Civil War he was appointed colonel of the Seventeenth Wisconsin Volunteers, known as the Irish regiment. March 15, 1862 this regiment was mustered in at Camp Randall, nine hundred and forty-one strong; however, when ordered to the front the regiment mutinied because it had not been paid. The joint exertions of Governor Harvey and Colonel Doran brought the men to terms and they embarked for St. Louis, whence they moved South in time to participate in the battle of Shiloh. Colonel Doran led his troops in that battle with great gallantry. He resigned at the close of 1862 and soon removed to Chicago, where he practiced law for many years. Colonel Doran's death occurred at Chicago in 1888 or early in 1889. *Manuscript record.*

GARRETT M. FITZGERALD was a member of the first convention. For his biography, see *Wis. Hist. Colls.*, xxvii (Constitutional Series, ii), 771.

ALBERT FOWLER was a native of Massachusetts, born in Monterey, Berkshire County, September 8, 1802. His father, Elijah Fowler, died when Albert was ten years old; soon thereafter the family went to live at Westfield, Chautauqua County, New York, then a frontier region. Young Fowler, enured to pioneer hardships, in 1832 sought a farther frontier; his first visit to Chicago occurred when the excitement of the Black Hawk War was at its height and the cholera epidemic was raging among the troops. After a winter in the East Fowler returned the spring of 1833 to Chicago with an outfit of Indian goods, and at the Potawatomi treaty of September realized a considerable profit. Thereupon he with three comrades purchased a wagon and team of horses and drove overland to Milwaukee, then only a fur trade post, arriving November 18, 1833. During the winter of 1833-1834 these four young men kept house in a trader's deserted cabin. The next spring the other men left, while Fowler remained to work for Solomon Juneau. The latter had sent young Fowler in January, 1834 on an Indian pony to Chicago

Warden before the Civil War was a Douglas Democrat; he became, however, a follower of Lincoln and was presidential elector at his second election and also one for Grant in 1868. In both campaigns Warden was a prominent campaign speaker. In 1872 he supported Cleveland and was himself a Democratic candidate for Congress but was defeated. In 1875 because of his wife's health he determined to remove to a milder climate. Having settled at Lamar, Barton County, Missouri, he became mayor of the town and judge of the county court. There Judge Warden passed the remainder of his life, dying March 11, 1897. Manuscript and printed records.

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GARRETT M. FITZGERALD was a member of the first convention. For his biography, see *His. Coll.*, xxvii (Constitutional Series, B), 711.

ALBERT FOWLER was a native of Massachusetts, born in Montreat, Berkshire County, September 8, 1802. His father, Elijah Fowler, died when Albert was ten years old; soon thereafter the family went to live at Westfield, Chautauque County, New York, then a frontier region. Young Fowler, eager to pioneer hardships, in 1822 sought a farther frontier; his first visit to Chicago occurred when the excitement of the Black Hawk War was at its height and the cholera epidemic was raging among the troops. After a winter in the East Fowler returned the spring of 1823 to Chicago with an outfit of Indian goods, and at the Potawatomi treaty of September received a considerable profit. Thereupon he with three comrades purchased a wagon and team of horses and drove overland to Milwaukee, then only a fur-trade post, arriving November 18, 1823. During the winter of 1823-1824 these four young men kept house in a trader's deserted cabin. The next spring the other men left, while Fowler remained to work for Johnson, Jansen. The latter had sent young Fowler in January, 1824 on an Indian party to Chicago

to get a physician for Mrs. Juneau, and soon thereafter the newcomer became a member of Juneau's family, learned to use the Potawatomi and Menominee languages, and was occupied with the fur trade. In 1835, when Milwaukee began to grow, Fowler was commissioned justice of the peace and devoted more time to real estate than to the Indian trade. The earliest records of Milwaukee County are in his handwriting, and he rendered many services to the youthful community. In the panic of 1837 he lost heavily; shortly thereafter he took up land at Wauwatosa, holding his residence in Milwaukee, where he was clerk of court and register of deeds. In 1847 he was elected as a Democrat to the constitutional convention, wherein he was much respected for his probity and excellent judgment. After residing in Milwaukee twenty years Fowler in 1853 moved to Rockford, Illinois. There he was three times elected mayor of the city, and contributed much to its upbuilding. He died at Rockford, April 12, 1883; the burial was at Forest Home, Milwaukee. *Newspaper record.*

BYRON KILBOURN, one of the founders of Milwaukee and a promoter of state improvements, was born at Granby, Connecticut, September 8, 1801. His childhood home was in Ohio, whither when the boy was two years of age his father removed and founded the town of Worthington, near Columbus. Honorable James Kilbourn, the father, was a prominent merchant of Ohio and one of its Congressmen. His wife, Lucy, was the daughter of John Fitch, the inventor. Byron was well educated for his time and early began to share in his father's enterprises. At the age of twenty-two he began surveying for canal routes and in 1832 was resident engineer of the Miami Canal. Through his acquaintance with Micajah Williams he secured a contract for surveying in western Michigan Territory and landed in May, 1834 at Green Bay. During his surveying work he visited Milwaukee and was impressed with the possibilities of the site. At the land office sale of July, 1835 he bid in the west side of Milwaukee River and thereafter made that his home. A separate village called Kilbourntown was platted, which in 1839 united with Milwaukee east of the river. Kilbourn's chief project for the growth of this territory was the Milwaukee and Rock River Canal; for this he secured a land grant from Congress; however, for many reasons the canal was never built. He was also a prominent promoter of the Milwaukee and Mississippi Railway. In 1840 Kilbourn was Democratic candidate for Congress, but was defeated by James D. Doty. Kilbourn served in the territorial legislature. In the second constitutional convention he was chairman of the committee on general provisions. He was elected mayor of Milwaukee in 1848 and again in 1854; in 1855 he was defeated for the United States Senate by one vote. In 1868 he left Milwaukee to recuperate his health in Florida, where December 16, 1870 he died. He is buried in Jacksonville Cemetery. *Manuscript and printed records.*

GENERAL RUFUS KING was one of the most brilliant editors who ever lived in Wisconsin. Of distinguished ancestry, son of Charles King, president of Columbia College, grandson of a signer of the Declaration of Independence, Rufus King was born January 26, 1814 in New York City. He was designed for a military career, entered West Point in 1829, and graduated four years

later as an engineer. He was stationed for a time at Fortress Monroe and afterwards employed on the Ohio-Michigan boundary survey. In 1836 he resigned to become an engineer on the Erie Railway. His literary tastes, however, drew him into journalism and in 1839 he became editor of the *Albany Advertiser*, a Whig journal; from 1841 to 1845 he was associate editor with Thurlow Weed of the *Albany Evening Journal*. Meanwhile he was for four years adjutant general of the state. In 1845 General King became editor of the *Milwaukee Sentinel*, which he ably conducted for sixteen years. He served the new community as regent of the State University and as colonel of Wisconsin militia; from 1859 to 1861 he was city superintendent of Milwaukee schools. In 1861 President Lincoln appointed him minister to the Papal States at Rome, but on the outbreak of the Civil War King surrendered the appointment in order to volunteer for military service. He was made brigadier general and organized the famous Iron Brigade, which he commanded for nearly two years. In October, 1863 ill health forced his resignation, and President Lincoln again appointed him minister to Rome. This time he accepted and served until 1867. For a short time thereafter he was employed in the New York Custom House; he died in that city October 13, 1876. General King was an orator and a statesman. In the constitutional convention he served on the committee on executive, legislative, and administrative provisions, and on several special committees. His experience and wisdom contributed largely to the success of the constitution. *Manuscript and printed records.*

CHARLES HENRY LARKIN was elected to the convention from the south side of Milwaukee to represent the Democrats. Although an admirer of Henry Clay, Larkin adhered to the party of his opponents. In the convention he was popular and genial, but took no large share in the discussions. Larkin was a native of Connecticut, born at Stonington in 1810. He grew up on his father's farm and in 1823 removed with his parents to Alden, near Buffalo, New York. There he attended the village academy and began business life as a clerk in Alden and later in Buffalo. In 1836 Larkin came to the then tiny village of Milwaukee, where he thereafter made his home. He had large land holdings, bought and sold horses, built warehouses, and engaged in the forwarding trade. In his later life he lived on Hanover Street and there passed away August 16, 1894. He held many offices in the gift of the people: he was sergeant at arms in the territorial assembly of 1845; a member of the state senate 1866-1869; and of the assembly in 1872, 1874, and 1875. He was county treasurer and sheriff of Milwaukee County, school commissioner, and commissioner of public debt. During the Civil War he was offered a colonel's commission but did not qualify; he actively supported the government, however. In all places of trust he acted efficiently and honestly. *Manuscript and printed records.*

MORITZ SCHOEFFLER was the only delegate of German birth in the second constitutional convention. He was elected as a Democrat from Milwaukee, where he was editor of its oldest German newspaper. Schoeffler was born March 8, 1813 at Zweibruecken on the Rhine in the Bavarian Palatinate. He was educated as a printer and after emigrating to America in 1842 worked at his trade in New York and in several other American cities. In 1844 he

later as an engineer. He was stationed for a time at Fortrose Monroe and afterwards employed on the Ohio-Michigan boundary survey. In 1838 he resigned to become an engineer on the Erie Railway. His literary tastes, however, drew him into journalism and in 1833 he became editor of the Albany Advertiser, a Whig journal; from 1841 to 1845 he was associate editor with Thurston Wood of the Albany Evening Journal. Meanwhile he was for four years adjutant general of the state. In 1845 General King became editor of the Milwaukee Sentinel, which he ably conducted for sixteen years. He served the new community as regent of the State University and as colonel of Wisconsin militia; from 1859 to 1861 he was city superintendent of Milwaukee schools. In 1861 President Lincoln appointed him minister to the Papal States at Rome, but on the outbreak of the Civil War King surrendered the appointment in order to volunteer for military service. He was made brigadier general and organized the famous Iron Brigade, which he commanded for nearly two years. In October, 1863, ill health forced his resignation, and President Lincoln again appointed him minister to Rome. This time he accepted and served until 1867. For a short time thereafter he was employed in the New York Custom House; he died in that city October 13, 1878. General King was an orator and a statesman. In the constitutional convention he served on the committee on executive, legislative, and administrative provisions, and on several special committees. His experience and wisdom contributed largely to the success of the constitution. Manuscript and printed records.

CHARLES HENRY LARKIN was elected to the convention from the south side of Milwaukee to represent the Democrats. Although an admirer of Henry Clay, Larkin adhered to the party of his opponents. In the convention he was popular and genial, but took no large share in the discussion. Larkin was a native of Connecticut, born at Stratford in 1818. He grew up on his father's farm and in 1835 removed with his parents to Alden, near Buffalo, New York. There he attended the village academy and began business life as a clerk in Alden and later in Buffalo. In 1838 Larkin came to the then tiny village of Milwaukee, where he thereafter made his home. He had large land holdings, bought and sold horses, built warehouses, and engaged in the forwarding trade. In his later life he lived on Hanover Street and there passed away August 18, 1894. He held many offices in the life of the people; he was vice-president at times in the territorial assembly of 1846; a member of the state senate 1858-1860; and of the assembly in 1872, 1874, and 1875. He was county treasurer and sheriff of Milwaukee County, school commissioner, and commissioner of public debt. During the Civil War he was offered a colonel's commission but did not accept; he actively supported the government, however. In all places of trust he acted efficiently and honestly; manuscript and printed records.

MORRIS SCHOFER was the only delegate of German birth in the second constitutional convention. He was elected as a Democrat from Milwaukee, where he was editor of its oldest German newspaper. Schofer was born March 8, 1813 at Zweibrücken on the Rhine in the Prussian Palatinate. He was educated as a printer and after emigration to America in 1843 worked at his trade in New York and in several other American cities. In 1844 he

bought some German type, came to Milwaukee, and established the *Banner*, which was published until 1913, becoming in 1850 a daily and uniting with its rival the *Volksfreund* in 1855. In the convention Schoeffler was influential in securing the article on franchise, which gave liberal privileges to foreigners. He served as register of deeds in 1850-1851 and as collector of customs in 1857. Schoeffler was an ardent Democrat; he acted, however, as one of the vigilance committee at the time of the Glover fugitive slave rescue in Milwaukee; while actively opposed to slavery, he never joined the Republican party. He continued his editorial connection with the *Banner* until 1874, when failing health caused retirement. He died December 6, 1875. Tenney and Atwood, *Memorial Record*, 256-258.

PORTAGE AND SAUK COUNTIES

WILLIAM H. KENNEDY represented in the second constitutional convention as a Whig the Wisconsin "pineries," then politically a part of Portage County. He came in 1845 to Mosinee from Pennsylvania, where he was born April 15, 1817, the son of William and Jeanette Farries Kennedy. The great-grandfather of William Jr. came in the early eighteenth century from northern Ireland and belong to the old-school Presbyterians. The family maintained their religious connection even in the midst of a Quaker settlement; William H. Kennedy aided in starting the first Presbyterian Society in northern Wisconsin. He received an academic education; having studied law, he practiced for a short time at Mount Carroll, Illinois, before seeking the Wisconsin pineries. There he was a lumberman as well as a lawyer, first at Mosinee, then at Wausau. At the latter place he served as judge; in 1857 he was president of the Sons of Temperance. In 1859 he accompanied the yearly lumber fleet on its voyage down the Wisconsin and the Mississippi, was taken ill at St. Louis, and died there August 29. *Manuscript record.*

RACINE COUNTY

ALBERT GALLATIN COLE, son of Isaiah M. and Olive B. Monroe Cole, was born April 4, 1819, at Adams, Jefferson County, New York. Young Cole determined to study law, and at the age of twenty-one he was admitted to the bar at Albany. The same year he married and began practice in Oswego County. Some time during his early manhood Cole was employed as a surveyor on one of the first railroad lines in the state of New York. In 1846 he determined to remove to Wisconsin Territory and arrived at Southport on July 4. He settled at Burlington in Racine County, and was thence elected the next year as a Democrat to the second constitutional convention, wherein he served on the judiciary committee. In 1863 he removed to Kenosha, where later he became a partner of General Lovell. Lovell had a high opinion of the legal ability and knowledge of law possessed by Cole; nevertheless he never held a judicial position. He was, however, justice of the peace, and was regarded with esteem in his community. He had five sons, two of whom served in the Civil War, one being killed at the battle of Bull Run. Some time before his death Cole became paralyzed, and after long suffering died June 2, 1889 at his Kenosha home. *Manuscript record.*

bought some German type, came to Milwaukee and established the Banner, which was published until 1818, becoming in 1829 a daily and uniting with its rival the Volksfreund in 1835. In the convention Schoffer was influential in securing the article on franchises, which gave liberal privileges to foreigners. He served as register of deeds in 1850-1851 and as collector of customs in 1851. Schoffer was an ardent Democrat; he acted, however, as one of the vigilantes; at the time of the Glover fugitive slave rescue in Milwaukee; while actively opposed to slavery, he never joined the Republican party. He continued his editorial connection with the Banner until 1874, when failing health caused retirement. He died December 8, 1875. Tenny and Atwood, Milwaukee Record, 258-259.

PORTAGE AND SAUK COUNTIES

WILLIAM H. KENNEDY represented in the second constitutional convention as a "Wild the Wisconsin" pioneer, then politically a part of Portage County. He came in 1815 to Madison from Pennsylvania, where he was born April 15, 1817, the son of William and Jeanette Pardee Kennedy. The great-grandfather of William Jr. came in the early eighteenth century from northern Ireland and belong to the old-school Presbyterians. The family maintained their religious connection even in the midst of a Quaker settlement; William H. Kennedy aided in starting the first Presbyterian Society in northern Wisconsin. He received an academic education; having studied law, he practiced for a short time at Mount Carroll, Illinois, before seeking the Wisconsin pioneer. There he was a lumberman as well as a lawyer. First at Madison, then at Waupun. At the latter place he served as judge; in 1837 he was president of the Sons of Temperance. In 1839 he was elected to the Wisconsin House of Representatives, his voyage down the Wisconsin and the Mississippi was taken in at St. Louis, and died there August 28. Manuscript record.

RACINE COUNTY

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STEPHEN A. DAVENPORT was a native of Madison County, New York, where he was born in 1806. There he grew up, married, and had several children before he removed, in the later years of the territorial period, to Brighton, Racine (now Kenosha) County and bought a large farm. He was a man of fine abilities, well-read, and well-informed; he rendered useful service to the convention, to which he was elected as a Democrat. In 1850 Mr. Davenport had the "gold fever," and left his family to make his fortune in California. He had washed out considerable metal in the American River, when he inadvertently fell into the stream, took a severe cold, and died in December, 1850. He was buried in California. His descendants lived for many years on the home farm in Kenosha County. *Manuscript record.*

ANDREW B. JACKSON, son of Orrin and Hannah Frisbie Jackson, was born at Wolcott, Connecticut, in 1814. He was educated and married at New Haven. In 1837 he removed to Racine County and settled on a farm at Bristol. In early days he was a Democrat, and as such was elected to the territorial assembly of 1846 and to the constitutional convention. Upon the formation of the Republican party he joined its ranks and was appointed April 22, 1861 register of the Menasha land office. Being in Washington directly after the firing on Sumter, Jackson was enrolled in what was known as the "Clay Guards" and prepared to defend his country's capital with his life. (See his letter published in *Wisconsin Magazine of History*, iii; 244-246.) The sacrifice was not required of him, however, and he served until 1866 in the Menasha land office. In the autumn of 1868 Jackson removed to Evanston, Illinois, where he had large land interests. He died at the neighboring suburb of Rogers Park, March 25, 1878. Jackson was a man of integrity and honor; he took his work for the convention earnestly, and gave conscientious attention to the wishes of his constituents. He was actively attached to the interests of the Methodist Church, and was held in esteem in every community where he resided. *Manuscript record.*

FREDERICK S. LOVELL was a member of the first constitutional convention. For a biographical sketch, see *Wis. Hist. Colls.*, xxvii (Constitutional Series, ii), 782.

SAMUEL R. MCCLELLAN, son of Robert and Sarah Duncan McClellan, was born March 19, 1806 at Coleraine, Massachusetts. His father having died when the boy was five years old, Samuel went to live with an uncle, Dr. John McClellan, of Johnstown, New York. The younger McClellan was educated for his uncle's profession; when he was twenty years old he spent a year in Boston attending medical lectures and the next year began to practice near home. After trying his fortune in one or two small towns, in 1830 Dr. McClellan returned to Johnstown and practiced there for five years. Then he removed to Hudson, New York, where he had a large and successful practice. In 1845 Dr. McClellan determined to start afresh in a new part of the country and brought his family to Wisconsin, where he opened a large farm in Wheatland, now Randall Township of Kenosha County. Thence he was elected to the convention on the Democratic ticket; he served therein on the judiciary

committee. He was a member of the state senate for the years 1858-1859; for three years he was president of the Kenosha County Agricultural Society. Later in life Dr. McClellan removed to the city of Kenosha and once more engaged in medical practice; he died at the latter place, June 11, 1890. In the practice of his profession and in his civic duties Dr. McClellan was a quiet but esteemed member of every community where he lived. Tenney and Atwood, *Memorial Record*, 243-244; *Manuscript record*.

JAMES DENOON REYMERT was the only native of Norway elected to either convention. He was born in 1821 in Farsund, a southern Norwegian port; at the age of fifteen he went to a commercial college at Christiania and the next year he began business in Scotland, the home of his mother. After five years as a merchant at Leith, Reymert came to America and settled in Wisconsin Territory, where many of his race were already living. Upon his first arrival in the township of Norway, Racine County, he supported himself by teaching; in 1847 he assumed the editorship of the *Nordlyset*, the first Scandinavian paper in America. He was elected to the convention as a Democrat and served on the "omnibus" or general provisions committee; he supported the proposal that aliens should have the same right of property descent as citizens; he also strongly urged liberal provisions for alien voters. Reymert was a man of social nature, free from bigotry, quick and individual in his decisions, and gifted with a warm imagination. His command of English made him serviceable to his countrymen and his community. In 1849 he was elected to the assembly; in 1854 and 1855 he sat in the state senate. In 1857 he again entered the assembly, this time from Milwaukee County, where he had a sawmill on Milwaukee River. The same year Reymert was appointed receiver of the land office at Hudson; there he was nominated for Congress in 1858 as a Douglas Democrat, but in the rising tide of Republicanism he failed of election. In 1861 Reymert removed to New York City, where he practiced law and also sold life insurance. In 1874 the state of his health made a drier climate necessary; thereupon he visited the high tableland of Peru, and after obtaining relief spent two years in South America. Returning to San Francisco he embarked once more in his profession, but after a year removed to the softer climate of Arizona, where at Pinal he spent several years engaged in mining, law, and journalism. He was the editor and publisher of the *Pinal Drill*. In Arizona Reymert acquired a competence and became a well-known citizen. He died in the spring of 1896 at Alhambra, California. Wisconsin Historical Society *Proceedings*, 1916, 190-194; *Manuscript record*.

HORACE T. SANDERS came to Wisconsin in April, 1842 and settled at Racine. He was born at Sheldon, Genesee County, New York, the first of May, 1820 and received a collegiate and legal education. He had an extensive law practice at Racine, where he was elected in 1847 as Democratic delegate to the constitutional convention. Although one of the youngest of its members, he took an active part in its debates, serving on the committee on general provisions. Sanders was later elected district attorney for his county, and in 1853 represented Racine in the assembly. At that session he was outspoken in his opposition to Judge Hubbell, and was appointed chairman of the committee that

conducted his impeachment trial. On November 27, 1861 Sanders was commissioned colonel of the Nineteenth Wisconsin Infantry, a regiment he did much to enlist. After a winter at Camp Randall, occupied in part in guarding Confederate prisoners, the Nineteenth entrained June 2, 1862 for the front. Ordered to Norfolk, Virginia, Colonel Sanders was made provost judge for that place; his Fourth of July oration for that year at Norfolk was much commented on both in the North and in the South. Colonel Sanders remained with his regiment throughout the war, for the most part serving in Virginia and participating in the offensive of 1864 against Richmond and Petersburg. At the war's close he was brevetted brigadier general, and having been mustered out April 29, 1865, returned to his home at Racine. The long campaigns had, however, undermined his constitution and he died October 6 of the same year. *Manuscript and printed records.*

THEODORE SECOR was the last survivor of the second constitutional convention. He died April 24, 1910 at Minneapolis at the age of ninety-six. He was born of Huguenot ancestry on July 6, 1814 in Greenville, Green County, New York. After an academic education he went to Pittsfield, Massachusetts, to study medicine and surgery, graduating in 1837. He practiced for a time in Fulton, Oswego County; thence he removed in 1840 to Racine. After a year or two of professional service he took up land in Mount Pleasant Township and began farming; there he was elected on the Democratic ticket to the convention, in which he took an active but not prominent part. In 1855 Secor removed to New Lisbon in Juneau County, where he assisted in organizing the Republican party; and in 1860 he was delegate to the national convention that nominated Lincoln. In 1877 he removed to Spencer, Iowa, and established a mercantile business, which he conducted until 1903, when he went to make his home in Minneapolis. *Manuscript and printed records.*

ROCK COUNTY

ALMERIN MARSHALL CARTER was a native of Litchfield County, Connecticut, where he was born October 4, 1814, the son of Guy and Sarepta Marshall Carter. About a year later the family removed to Paris, Oneida County, New York, where his father became a trustee of Madison University at Hamilton. There Almerin graduated in 1832. The life of a farmer attracted the young man, and for ten years he remained near his family home. In 1843 he removed to Wisconsin to take up government land in Johnstown Township, Rock County, whence he was elected on the Whig ticket to the constitutional convention. In the convention he was a member of the committee of fifteen, headed by Byron Kilbourn, to prepare business for the assemblage; this committee was known as the "breaking team." Carter was one of the first county commissioners of Rock; in 1868 he represented his district in the state legislature, where he served on the corporation committee. In later life Carter became a Republican, during the convention having voted with the antislavery Whigs. His long life was passed upon his farm and his interest in agricultural pursuits was keen. He was a member of the State Grange and of the order of Odd Fellows. He organized the first Congregational Society in Johns-

town. In 1882 he wrote a brief account of the constitutional convention, which in 1896 he rewrote and expanded. Two years later, while living in Janesville, he attended the semicentennial celebration of the constitutional convention, when he was stricken with paralysis and died June 7, 1898. *Manuscript record.*

JOSEPH COLLEY was the oldest member of the second constitutional convention, having been born March 8, 1777 at Newburyport, Massachusetts. When seven years of age he went to live in Bedford, New Hampshire, where he remained fifty-six years, serving in 1811 as town selectman, and for many years as justice of the peace; he was also in 1828-1829 a member of the New Hampshire legislature. In 1836 his son Samuel became interested in the New England Emigrating Company, whose promoter, Dr. Horace White, lived at Colebrook, New Hampshire. Mrs. White was a native of Bedford; and in 1838 Samuel Colley, his family, his sister Mrs. Jane Atwood, and her daughter accompanied Mrs. White to the new home her husband had built for her at Beloit, Wisconsin. Two years later the elder Colley followed his children and made Beloit his future home. He had intended when reaching the new territory to retire from public office, but in 1846 he was chosen one of the trustees of the village, and in 1847 was elected as a Whig to represent Rock County in the second constitutional convention. In that body he served on the committee on schedule and miscellaneous provisions. He favored negro suffrage and was a strong antislavery man. The remainder of his life was passed in Beloit, where he died May 7, 1867. Tenney and Atwood, *Memorial Record*, 201-202; *Manuscript record.*

PAUL CRANDALL was a typical New England pioneer, who in successive periods moved across the North American continent to make his final home on the western coast. He was born September 20, 1802 on a farm in Montville, eight miles from New London, Connecticut. He grew up on this farm with the limited educational opportunities of the country lad of his day. In 1823 he removed with his father's family to western New York, then a wilderness frontier. After subduing a farm in that region, Paul Crandall married and settled for a few years at Newport, Ohio. Thence in April, 1842 he came to Lima, Rock County, Wisconsin, and opened a new farm. Crandall was at that time an antislavery Whig; in 1846 he was a candidate for the first constitutional convention, when the entire Rock County Whig ticket was defeated. In 1847 this ticket was successful, and Crandall found himself one of Rock County's delegation to the convention. During the session of the convention his sound judgment and quiet but firm convictions were much appreciated by his associates. In 1849 he was without his own knowledge nominated for the state assembly and elected thereto. He was chosen one of a committee, whose chairman was Marshall M. Strong, to revise the state laws, and spent thirteen strenuous weeks in this service. In 1852 Crandall again listened to the call of the West. He left his home in Rock County and joined a caravan for the Oregon country; he bought a farm near Salem and there spent the remainder of his days. From the Whig party he gravitated to the Republican party, but refused to hold office in Oregon. He died at his home near Salem, January 3, 1889. *Manuscript record.*

EZRA ALBERT FOOT was a self-made man in the best sense of the word; his parents, Joseph and Abigail Baldwin Foot, were poor, and after his father's early death he cared for his mother and family for some years. Their home was in Connecticut, where at North Goshen the subject of this sketch was born February 6, 1809. With few early advantages he was quickly recognized in his community as a man of ability and worth, and was chosen for many local responsibilities. In 1843 he became agent for an estate that had large holdings in Wisconsin. When visiting the territory he secured land for himself and in 1845 he removed his family to the present Footville, Rock County. He was at once appointed justice of the peace and in 1846 was nominated on the Whig ticket as delegate to the first constitutional convention. All the Whigs from Rock County were defeated at this time; but in 1847 Foot was again a candidate and this time was successful. In the convention he took an active part, serving on the committee on engrossment. He was in the state assembly in 1857 and again in 1867. At the outbreak of the Civil War he enlisted over one hundred recruits, while as a member of the state senate in 1861 and 1862 he supported the necessary war appropriations. From 1862 to 1868 he was trustee of the State Hospital. During the same period he was active in building up banking and railroad interests in Rock County, owning several warehouses along the line of railway. In 1869 he removed to Kansas, where he promoted the town of La Cygne, of which he became the first mayor. After seven years Foot returned to live in his Wisconsin home, and the next year was elected chairman of the board of supervisors and justice of the peace. He was an active member of the Methodist Church and a trustee of Evansville Seminary. He died at his home at Footville, December 21, 1885. *Manuscript record.*

LOUIS POWELL HARVEY, the seventh governor of Wisconsin, was one of the youngest members of the second constitutional convention, having been born July 22, 1820 at East Haddam, Connecticut. He was a descendant of Thomas Harvey of Revolutionary fame, and son of David and Almira Powell Harvey. When a boy of eight years, young Harvey's family removed to Strongsville, Ohio, where the boy grew up with a taste for books and a desire for an education. In 1837 he entered Western Reserve College, supporting himself by book binding. His health failed before he could graduate and he sought employment in Kentucky, where he taught a few months at Nicholasville, until a better position offered at Woodward College, Cincinnati. At this latter place he remained two years. In the autumn of 1841 he came to Southport, Wisconsin Territory, and started an academy that proved successful. Harvey was an enthusiastic Whig and in 1840 campaigned for William Henry Harrison; after his death President Tyler appointed the young orator postmaster at Southport; however, within a few months he resigned because of disapproval of Tyler's policy. About that time he started the *American* at Southport, which he ably edited while continuing to teach. In 1847 Harvey married Cordelia A. Perrine from New York, and together they removed to Clinton, Rock County, where Harvey was a merchant. There he was elected on the Whig ticket to the convention, in which he did much as a member of the committee on education to develop the present system of public schools. In 1851 the Harveys removed to Waterloo, which they renamed Shopiere, tore down a distillery, and built a mill upon the water power. There Harvey was

chosen state senator, serving from 1854 to 1857. He was popular with his colleagues and in 1859 was elected to the secretaryship of state. Two years later both Union and Republican parties named him governor, and he took office in January, 1862 amidst the throes of the Civil War. His administration was brief; on April 19 of the same year, after visiting the battle field of Shiloh to carry cheer and comfort to Wisconsin soldiers, he was drowned by accident in the Tennessee River. His body was recovered and brought to Madison for burial. Mrs. Harvey became one of the most active and useful of the women who brought aid and comfort to the soldiers throughout the Civil War. *Civil War Messages and Proclamations of Wisconsin War Governors*, 89-91.

EDWARD VERNON WHITON was recognized as one of the leading members of the convention. He was second to Judge Dunn on the judiciary committee; his advice was sought on every difficult question, and his efficient and reasonable solutions were an important factor in shaping the constitution. It fell to Whiton's lot during the first decade of statehood to be the chief interpreter of the instrument he had helped to frame. It is difficult to say wherein he was most eminent—as a legislator, a constitution maker, or a judge. Edward V. Whiton, son of Joseph Whiton, was born in Berkshire County, Massachusetts, June 2, 1805. The boy was educated at his native town and at one time he served as its librarian, when he acquired the knowledge of history that proved so useful to him in mature life. About 1830 young Whiton determined to study law. He thereupon entered the office of William Porter at Lee and was admitted to the Massachusetts bar October 4, 1836. It is said that Daniel Webster gave the young lawyer a letter of introduction to western friends. Be that as it may, Whiton spent his first western winter in Lorraine County, Ohio, and came to Wisconsin Territory in the spring of 1837. He had in youth learned the carpenter's trade; taking up land on Rock River on the site of the present Janesville, he built himself a log cabin and became acquainted with his neighbors. These neighbors, few in number but full of hope for the new territory, in 1838 elected the young lawyer to the legislature. There Whiton was appointed a member of a committee to revise the statutes, and in the final editing it fell to his task to prepare the work for print. These revised statutes of 1839 served the territory until the ratification of the state constitution. Whiton was a member of the legislature until 1842, at one session acting as speaker. Then he was elected to the council, wherein he served for four years. He was chosen a delegate to the constitutional convention as a Whig. Unfortunately for posterity he requested the reporters of the convention not to chronicle his speeches, so but the barest outline of their content is given in the journal. His ability, however, impressed itself upon all his associates. In 1848 he was named a candidate for judge of the second judicial circuit. His opponent was a well-known Democrat, David Noggle; yet in spite of a dominant Democratic majority Whiton was elected and held the office until the change in the formation of the state supreme court in 1852. In that year he was elected chief justice, reelected in 1857, and died at Janesville, April 12, 1859 before the expiration of his last term. He was an early member of the State Historical Society, one of its vice-presidents, and its constant friend. Winslow, *Story of a Great Court*, 16-17.

ST. CROIX AND LA POINTE COUNTIES

GEORGE WASHINGTON BROWNELL was born November 6, 1809 in Florida, Montgomery County, New York. His youth was spent in Onondaga County of the same state, whence about 1834 he migrated to St. Louis and became interested in the lead mines of Missouri. Brownell was a scientific prospector, seeking mining claims in various parts of the country. About 1842 he visited the Wisconsin lead mines, where he became much interested in geological formations and mineral locations. While in this region he was for a time in the editorial department of the *Galena Gazette*. He likewise visited Washington to interest the authorities of the Smithsonian Institution in his scientific ideas. In 1846 he removed to the upper Mississippi in order to prospect for copper mines. He made locations at St. Croix Falls and on Kettle River, then visited the new Lake Superior copper regions. Impressed with the possibilities of St. Croix Falls he decided to locate there, and thither in the autumn of 1847 he brought his bride. The same season he was elected to the constitutional convention; he was three weeks en route to Madison, traveling on snowshoes and camping in the woods. In the convention he attempted to promote a new state on Lake Superior, which would have made Wisconsin's northern boundary the line of the Chippewa and Montreal rivers; but he was overruled, and refused to sign the constitution as adopted. Soon after the close of the convention Brownell became agent for a large Boston company that proposed developing the mines and lumber interests of the St. Croix. Their plans were too ambitious for immediate success, so in 1851 Brownell returned to Galena and became a shipper of grain. Ten years later he purchased a plantation near Vicksburg; but the Civil War interfered with his plans for raising cotton. Meanwhile he became interested in Colorado mines and in 1867 took the stage at Atchison, Kansas, that went overland to Denver via the Smoky Hill route. June 15 near Pond Creek on the western border of Kansas the stage party was attacked by hostile Indians. Brownell and one fellow traveler were killed. Their remains, shockingly mutilated by the Indians, were recovered and buried by General Grant's order at Fort Wallace. Brownell was a man of great ability and strong character; he made loyal friends, and his share in developing the mining interests of the state was considerable. *Manuscript record.*

SHEBOYGAN AND MANITOWOC COUNTIES

SILAS STEDMAN was born in 1785 at Chicopee, Massachusetts. His mother's maiden name was Sarah Howard. His father, Phineas Stedman, was a soldier in the Revolution; the son grew up with a taste for military life and was successively major and colonel of militia. He also served one term in the Massachusetts legislature. In 1835 Colonel Stedman came to Wisconsin in search of investments. After leaving Milwaukee for the north he visited Sheboygan Falls and planned to purchase at this site. At Green Bay he met Lieutenant R. B. Marcy and arranged with him and Samuel Beall to form a company to control the falls. Later this company was extended to take in Judge Doty, A. G. Ellis, and others. The land was bought at \$13.50 an acre.

Colonel Stedman afterwards bought out several of his partners, while Lieutenant Marcy sold his share to David Giddings. The next year Colonel Stedman contracted for a sawmill at the falls, laid out the village, and named it Rochester. That year he brought his family to live in Wisconsin. Colonel Stedman was elected to the convention as a Whig; he served on the committee on education and school funds. At the time of the Civil War he became a Republican and was postmaster at Sheboygan Falls from March 19, 1861 to January 18, 1865. Soon after his retirement his death occurred, the exact date of which has not been ascertained. *Manuscript and printed records.*

WALWORTH COUNTY

EXPERIENCE ESTABROOK. It has fallen to the lot of but few men to have been the founders of two commonwealths. Estabrook aided in drawing the constitution of Wisconsin in 1847-1848 and that of Nebraska in 1871. He was of Puritan ancestry and could trace his line to John Alden of the *Mayflower*. The eldest son of Seth Estabrook and Hannah Hebard, he was born in Lebanon, New Hampshire, April 30, 1813. He studied law and practiced for a time in Erie County, New York. In 1840 he removed to Wisconsin Territory and settled at Big Foot Prairie on Lake Geneva, Walworth County. There his abilities quickly attracted attention; he was chosen district attorney for the county and later served as school commissioner. In the constitutional convention he was chairman of the committee on education and school funds. Although a member of the Democratic party, Estabrook was in favor of suffrage for the negroes and proposed the suffrage article of the state constitution. At the close of the convention he was one of the delegates to the national convention that in 1848 nominated Lewis Cass for the presidency. In 1851 Estabrook was a member of the state assembly and in the autumn of that year was nominated and elected on the Democratic ticket attorney-general of Wisconsin. In this office he served from January, 1852 to January, 1854. At the close of this term at the suggestion of Senator Dodge, General Estabrook was appointed attorney-general for the newly-erected territory of Nebraska. He arrived January 1, 1855 at Omaha, where he made his home for the remainder of his life. After being district attorney for four years, General Estabrook served on the governor's staff during the Pawnee War of 1859; he was then chosen territorial delegate to Congress and, in 1866, revisor of Nebraska statutes. At the outbreak of the Civil War he aided in arming and equipping the Omaha "Wide Awakes," and strongly supported the federal government during the war. General Estabrook believed in the future of Omaha and did much to aid its progress as a community, in which he was a conspicuous and popular member of the bar. After his death, which occurred March 26, 1894, his colleagues united in eulogizing his abilities and his character. *Manuscript record.*

GEORGE GALE, son of Peter and Hannah Tottingham Gale, was born November 30, 1816 at Burlington, Vermont. In 1824 the family removed to Waterbury, where George grew up on a farm, having always an extraordinary love of books. In 1839 he was appointed postmaster at Waterbury Center. He

studied law and was in 1841 admitted to the bar. The same year he removed to Wisconsin Territory and began practice at Elkhorn, Walworth County. Young Gale took much interest in the educational and journalistic beginnings of the new territory. He was one of the first school commissioners of the county and secretary of a convention held in 1843 at East Troy to provide common schools and to promote normal school progress in Wisconsin. In 1846 he was owner and editor of Elkhorn's first newspaper, the *Western Star*. He also evinced much interest in temperance reform. In the convention, to which he was elected as a Whig, Gale served on the judiciary committee and was an active though quiet worker. At the close of the convention he was chosen district attorney for his home county. In 1850-1851 he was a member of the second state senate; upon the expiration of his term of office he removed to La Crosse, where he became county judge and in 1857 was elected circuit judge, in which office he served until 1863. Judge Gale had bought in 1853 the land on which Galesville, Trempealeau County, stands; there after 1854 he made his home and founded Galesville University. His work to promote educational and economic progress was recognized by the entire community. During the Civil War he was employed for some months in the Christian and Sanitary Commission work in the South. He died at Galesville, April 18, 1868. Judge Gale's literary, historical, and archeological work gave him a permanent title to fame. He suggested a historical society as early as 1846, was an early member of the State Historical Society, and wrote two unpublished historical sketches, now in manuscript in the Historical Library. His *Wisconsin Form Book* ran through many editions; while his work on the *Upper Mississippi* appeared in 1867. *Wis. Hist. Colls.*, vii, 422-425.

JAMES HARRINGTON, the only member of the convention who was a clergyman by profession, was born in 1810 in Warren County, New York; left an orphan at the age of two, he early learned the trade of carpenter and provided his own livelihood. At the age of sixteen he joined the Methodist Episcopal Church and when about twenty received a license to preach. For the next fourteen years he plied his trade and preached in Lugune and Johnsburg townships of his native county. In 1844 he removed to Wisconsin, and while living at Spring Prairie in Walworth County he was elected as a Democrat to the convention. At the 1848 session of the Wisconsin Methodist Conference, Harrington was received into full membership as a preacher and assigned to the charge at Whitewater. There, finding no church, he went to the woods, cut and hauled the timber, and built most of the church with his own hands. In 1849 volunteers were called for, to establish Methodism on the upper Mississippi. Harrington responded and was sent to Stillwater, Minnesota, where he did good service for a little over a year. In the summer of 1850 he was stricken with cholera and died August 21. *Manuscript record*.

AUGUSTUS CAESAR KINNE was born at Norwich, Chenango County, New York, December 3, 1808. He grew up on a farm and received an academic education. He taught school for some time and in June, 1838 came to Wisconsin Territory, where he made his home for a few months with Major Meacham at Troy, Walworth County. Later Kinne lived on Sugar Creek

Prairie, then on Heart Prairie. In 1850 he bought a large farm on section one of Sugar Creek Township and there lived until his death January 23, 1863. Kinne belonged to the Democratic party and served as county supervisor, justice of peace, and town superintendent of schools. A quiet man, his work in the convention was solid rather than conspicuous; nevertheless, he helped to lay the foundation for the commonwealth on a broad and equal basis. *Manuscript and printed records.*

HOLLIS LATHAM was a Vermonter, having been born at Northfield, Washington County, March 2, 1812. He was brought up on a farm, with district school opportunities. In 1836 Latham came to Milwaukee, where he arrived July 10; in December of that year he located at Spring Prairie but the following February bought land in Walworth County that is now a part of Elkhorn. There he resided for life. He was a man who inspired great confidence in his neighbors and was chosen to many local offices, which he conducted with great fidelity. He was first coroner of the county, clerk of court for several years, justice of the peace until the close of his life, and superintendent of the poor for a quarter of a century. In the convention he served on the committee on legislative, executive, and administrative provisions. In 1862 he was elected to the assembly. In politics Latham was a Democrat. He was much interested in agricultural development and for twelve years was secretary and for nine years treasurer of the Walworth County Agricultural Society. He died February 22, 1886. *Manuscript and printed records.*

EZRA AMES MULFORD, a native of New York State, where he was born in 1804, was educated as a physician. He came to Wisconsin in territorial days and bought land in Walworth Township, Walworth County, whence he was elected to the convention as a Democrat. He was appointed on the committee on general provisions. Although of a naturally retiring disposition, he was effective in debate. At the time of the convention Dr. Mulford was about forty-three years of age. He lived on his Walworth farm until his death, the date of which is not known. Tenney and Atwood, *Memorial Record*, 245-246.

WASHINGTON COUNTY

JAMES FAGAN was born July 4, either in 1813 or in 1814, in Westmeath County, Ireland. After emigrating to America he settled in Jackson Township of Washington County, where he was supervisor from 1846 to 1849. Fagan represented Washington County as a Democrat in the second constitutional convention, in which he served on the educational committee; he also represented the Cedarburg district in the assemblies of 1849 and 1857. He died at his home in Washington County in February, 1868. *Manuscript record.*

PATRICK PENTONY was born about 1804 in the parish of Dunover, County Meath, Ireland. In 1839 he emigrated to America and settled in Mequon Township of then Washington, now Ozaukee, County. Thence he was nominated and elected on the Democratic ticket to the second constitutional convention.

In this body he took little part save to record his vote. He died July 7, 1876 on his home farm. *Manuscript record.*

HARVEY GRISWOLD TURNER, son of Joseph and Mary Griswold Turner, was the youngest member of the convention, having been born June 7, 1822 at East Oswego, New York, where he received an academic education. He was eighteen years old when his father brought his family to Wisconsin and settled at Waukesha. Young Turner wished to study law and in 1842 entered the office of Finch and Lynde in Milwaukee. Two years later he was admitted to the bar and went to reside at Grafton, Washington (now Ozaukee) County, where he was the first lawyer in the town. Thence he was elected as a Democrat to the convention, wherein he was appointed on the committee on executive, legislative, and administrative provisions. He was later district attorney, judge of Ozaukee County, and member in 1851 of the state senate. In 1860 Judge Turner spent two years in New York. When he returned he took up practice at Port Washington. About 1876 he removed to Manitowoc; thence he removed in 1884 to Milwaukee and formed a partnership with his son, W. J. Turner. There on November 22, 1893 Judge Turner died. *Manuscript and printed records.*

WAUKESHA COUNTY

SQUIRE S. CASE, a native of Hillsdale, Columbia County, New York, was born September 27, 1801. During his boyhood his father removed to what was then the frontier, Chautauqua County, of the same state. There young Case grew up amid the hardships of pioneer life, living on a farm until 1822 when he established the Farmers' Hotel in Buffalo. Thereafter for twenty years he made that place his home, occupied with building and with developing the city. Twice, in 1837 and 1842, he served in the New York Assembly at Albany. In the latter year, having met with financial reverses, Case removed to Wisconsin, taking up land in Merton Township, Waukesha County. He there became interested in railways, and some years after his service in the constitutional convention he aided in securing the right of way for the La Crosse Railway. In 1857 he became its agent at Portage, where he lived until 1868, when increasing age led to his retirement. He thereafter resided in Mauston until his death there on March 30, 1878. Case was sent to the convention from Waukesha County as a Whig. He was a quiet, hard-working, useful member of the convention. He took much interest in the State Historical Society of Wisconsin, to which he was an early donor. Tenney and Atwood, *Memorial Record*, 193-194; *Manuscript record.*

ALFRED LOUIS CASTLEMAN was a Kentucky gentleman of great charm and ability. He was born December 17, 1808 at Shelbyville and educated at the University of Kentucky and at the Louisville Medical School. He practiced first in Indiana, coming thence in October, 1835 to Milwaukee. The next year he settled in Delafield, Waukesha County, where he practiced for several years and in 1842 served as first road commissioner for his township. There he was elected on the Whig ticket to the convention and was a member of the

committee on banks and banking. After that session he began practice in Milwaukee, which was his home for many years. He also lectured at Louisville and received honorary degrees from Indiana and Wisconsin universities. Of the latter he was regent from 1855 to 1861. He was appointed professor of medicine therein; but lack of funds made necessary the abandonment of the chair of medicine. Dr. Castleman was president in 1850, 1851, and 1855 of the State Medical Society. Upon the outbreak of the Civil War he enlisted and was appointed surgeon of the Fifth Wisconsin Volunteers. This regiment was mustered in, in June, 1861 and reached Washington in August of the same year. Dr. Castleman served with great devotion and acceptability and was finally made surgeon general of the brigade. His health, however, became seriously impaired; and because of that and his dissatisfaction with the conduct of the medical department he resigned at the end of 1862. The next year he resumed work as inspector of camps and hospitals in the Army of the Cumberland. After the battle of Chickamauga he returned to Milwaukee and continued his practice. Dr. Castleman wrote a book entitled *The Army of the Potomac behind the Scenes*, which was a severe arraignment of the policy of General McClellan. This exposé attracted much attention at the time of its publication. Therein he commends in the highest terms the voluntary work of the Sanitary Commission. After the Civil War Dr. Castleman's health continued to fail, so that in 1875 he removed to California and settled at San Jose. He died August 22, 1877 at Oakland and was buried at San Jose. *Manuscript record.*

EMULOUS P. COTTON was a descendant of the Reverend John Cotton of Massachusetts. His father, Owen, came from Vermont to New York in 1804 and settled at Skaneateles in Onondaga County. There he married Hannah Earll, and there their son Emulous was born December 24, 1811. In 1833 the younger Cotton married and in 1842 determined to remove to Wisconsin Territory. In partnership with John S. Rockwell of Milwaukee, Cotton purchased the water power at Oconomowoc and erected grist mills, which he operated until 1855. In 1847 he was elected to the convention as a Democrat and served therein on the committee on schedule and miscellaneous provisions. In 1855 Cotton bought the water power at Roche-a-Cri, Adams County, where he erected sawmills and kept a general store. The panic of 1857 swept away his property, after which he became postmaster of his town, serving in this office for over twenty-two years. In later life Cotton lost his sight and after years of patient endurance he passed away December 18, 1888. He was a man of extensive information, positive convictions, and strict integrity. *Manuscript record.*

PETER D. GIFFORD was born August 31, 1812 in Northampton Township of Montgomery County, New York. In 1844 he removed to Wisconsin Territory and settled in Eagle Township, Waukesha County, where he was postmaster of Ottawa, chairman of the board of supervisors, and justice of the peace. He likewise represented his district in the territorial legislature and was elected to the convention on the Democratic ticket. He was a useful member of the convention, and a social, kind-hearted neighbor, much esteemed in his com-

committee on peace and banking. After that session he began practice in Milwaukee, which was his home for many years. He also lectured at Louisville and received honorary degrees from Indiana and Wisconsin universities. Of the latter he was regent from 1855 to 1861. He was appointed professor of medicine therein; but lack of funds made necessary the abandonment of the chair of medicine. Dr. Castelman was president in 1850, 1851, and 1852 of the State Medical Society. Upon the outbreak of the Civil War he enlisted and was appointed surgeon of the Fifth Wisconsin Volunteers. This regiment was mustered in, in June, 1861 and reached Washington in August of the same year. Dr. Castelman served with great devotion and acceptability and was finally made surgeon general of the brigade. His health, however, became early and permanently impaired; and because of that and his dissatisfaction with the conduct of the medical department he resigned at the end of 1862. The next year he resumed work as inspector of camps and hospitals in the Army of the Cumberland. After the battle of Chickamauga he returned to Milwaukee and continued his practice. Dr. Castelman wrote a book entitled *The Army of the Potomac during the Seizure*, which was a severe arraignment of the policy of General McClellan. This expose attracted much attention at the time of its publication. Therein he comments in the highest terms the voluntary work of the Sanitary Commission. After the Civil War Dr. Castelman's health continued to fail, so that in 1875 he removed to California and settled at San Jose. He died August 22, 1877 at Oakland and was buried at San Jose. Manuscript record.

EMULOUS F. COTTON was a descendant of the Reverend John Cotton of Massachusetts. His father, Owen, came from Vermont to New York in 1804 and settled in Bennington in Oneida County. There he married Hannah Earl, and there their son Emulous was born December 24, 1811. In 1832 the younger Cotton married and in 1842 he migrated to Wisconsin Territory. In partnership with John E. Lockwell of Milwaukee, Cotton purchased the water power at Oconomowoc and erected great mill, which he operated until 1856. In 1847 he was elected to the convention as a Democrat and served therein on the committee on schools and miscellaneous provisions. In 1855 Cotton bought the water power at Rock-a-Cre Adams County, where he erected sawmills and kept a general store. The panic of 1857 swept away his property, after which he became postmaster of his town, serving in this office for over twenty-two years. In later life Cotton lost his sight and after years of patient endurance he passed away December 18, 1895. He was a man of extensive information, positive convictions, and strict integrity. Manuscript record.

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munity. About the time Wisconsin attained statehood Gifford built a hotel called "Equality" at North Prairie; in that town he spent the remainder of his life. He was elected to the assemblies of 1851, 1862, and 1866. He died March 15, 1888 at the Mendota State Hospital, where he had been sent for treatment. *Manuscript record.*

ELEAZER ROOT, one of the founders of Wisconsin's educational system, was a native of Canaan, New York, where he was born March 6, 1802. After an academic preparation young Root entered Williams College and graduated at the age of nineteen. He then studied law, and after admission in 1824 to the bar of New York he practiced for some years at Hudson. His health having failed, Root in 1830 went South to recuperate. He had a flourishing seminary for young women in Virginia and later one in Missouri. In 1845 he came to Waukesha and began practicing law. He interested himself in the educational growth of his new home, and was largely influential in founding Carroll College. In the constitutional convention, to which Root was elected as a Whig, he served on the committee on education, drafted the article thereon embodied in the constitution, and spoke effectively in its favor. When the state government was organized Root was chosen without opposition first superintendent of public instruction and reelected for a second term; it thus fell to his lot to carry out the provisions on education that he had advocated in the convention, and to build the educational system of the state. He was an early regent of the State University, and it was he who persuaded Professor Sterling to come from Waukesha and open the first classes in the University. Root had a plan for coordinating all the educational institutions of the state, which was, however, only in part carried out. At the close of his term of office he removed to Dartford, Marquette County, which he represented in the assembly of 1852. Ill health caused him again to seek a southern climate, and he finally settled in Jacksonville, Florida. There, having taken orders, he became the rector of the Episcopal Church, and there after many years of service he died July 25, 1887. He always retained a deep interest in Wisconsin affairs, especially in all that concerned its educational policy. In 1879 he wrote, "I desire to say, that I have never, anywhere, met with men more intelligent, enterprising, and noble than the early settlers of Wisconsin." *Manuscript and printed records.*

GEORGE SCAGEL JR. was elected as a Democrat to the second constitutional convention from New Berlin, Waukesha County. He was a brother-in-law of Benjamin Hunkins, who represented the same district in the first convention. Scagel was of English and Scotch ancestry; his parents, George and Sally Pierce Scagel, removed from Maine to Vermont, where at Waterbury the subject of this sketch was born December 29, 1798. Young Scagel grew up on a farm and was always a farmer. While living in Vermont he held the office of captain of the militia and justice of the peace. He removed to Wisconsin in May, 1846. In the convention he served on the committee on general provisions but took no important part in the debates. He died at his home at New Berlin, August 30, 1850. *Manuscript record.*

WINNEBAGO AND MARQUETTE COUNTIES

HARRISON REED, a pioneer journalist of Wisconsin, was a younger brother of George Reed, delegate to the first constitutional convention. Their parents were Seth and Rhoda Reed, and Harrison was born August 26, 1813 at Littlefield, Middlesex County, Massachusetts; in infancy he removed to Westford in the same state, and in 1823 to Castleton, Vermont. There the boy grew up, learning the printer's trade and securing a fair education. Some time in the early thirties the Reeds moved to Troy, New York, where Harrison cast his first vote for Henry Clay. In 1836 Reed came with his brothers to Milwaukee, and there next year he was pressed into service to issue the *Sentinel*, whose editor and publisher had died. For almost five years, Reed performed all the work of typesetting, editing, and publishing the little weekly, to which he gave a somewhat Whiggish tone, although politics in Wisconsin were then more personal than political. In 1841 an opposing element secured possession of the *Sentinel*, and Reed sought Madison, where for a short time he published the *Enquirer*. In 1843 he bought from the government the Indian reservation at Winnebago Rapids and was the first settler and virtual founder of the town of Neenah. The next year he was postmaster and chairman of the county board of supervisors. In 1847 he contested the seat for the convention with Satterlee Clark, and entered that body as Whig delegate from Marquette and Winnebago counties. He was a member of the committee on general provisions, was ready in debate, and had much influence with his associates. In 1848 he was a presidential elector on the Taylor ticket. Reed was one of the founders of the Republican party in Wisconsin; in 1856 he began the publication of the *Neenah Conservator* and issued it for two years, when he sold it to Menasha parties. In 1859 he returned to Madison and from June 1 of that year until June 1, 1861 was in partnership with David Atwood and Horace Rublee as editors of the *Wisconsin State Journal*. In 1862 President Lincoln requested Reed to go to Florida and aid the efforts of the federal government to get control of that state. He did so, and thereafter made Florida his home and was governor thereof from 1868 to 1873 and a member of its assembly in 1878. He died at South Jacksonville, May 25, 1899. *Manuscript and printed records.*

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SUMMARY OF STATISTICS

FOR THE

SECOND CONSTITUTIONAL CONVENTION

Politically this convention had forty-one Democrats, twenty-five Whigs, and three Independents. Twenty-six of the sixty-nine members were natives of New England and twenty-five of New York State. Most of the latter were of New England antecedents. Of the New Englanders the largest groups represented Connecticut and Vermont, nine and seven respectively. One was from New Jersey, two (of Irish parentage) from Pennsylvania. The southern states were represented by six members: four from Kentucky, one each from Maryland and Virginia. Ohio furnished two, one belonging to the southern frontier type, one to the northeastern. From Europe there were five Irish, one German, and one Norwegian. Occupationally thirty-one described themselves as farmers, and two as physicians and farmers. Some of the other professional men operated farms, which made agriculture the dominant interest. The lawyers numbered nineteen. There were two physicians, two editors, one geologist, and one clergyman (who wrote himself down as carpenter). There were five merchants, two millwrights, one carpenter, and one lumberman. No member described himself as miner, but one or two well-known mining operators wrote themselves down as farmers. One, who entered himself as "constitution maker," was a farmer and tavern keeper; a Milwaukeean who entered himself as civil engineer might also have written "capitalist." In age, twelve had not reached their thirtieth birthday, and thirty-two were between thirty and forty. Only two were over fifty. Three had arrived in Wisconsin since the holding of the former convention; thirty-six had lived in the territory five years or less, and twenty-one more than seven years. The oldest residents were Martin of Green Bay, Rountree and Ramsey of the lead region. All three had lived twenty years in the regions they represented. Fowler, Kilbourn, and Castleman had been at Milwaukee since its beginnings. Biggs, Hollenbeck, and Dunn of the southwest came in with the territory or before.

Albany. See Foreigners.

Alto, population 1847, 351; representation, 303.

Amendments, method, 114, 329, 337; article on, 595, 733-734, 781, 823; debated, 745-747; engrossed, 789; concurred in, 335, 823.

American Freeman. See Waukesha.

Appointments. See Executive.

Apportionment, basis of, 30-31, 150, 328, 331-337; single district system, 423-429, 521-522, 545; for state senators, 521-522; assembly, 116, 522-523, 537-547;

San River, population 1847, 352.

Baird, Dr. Robert, of Pennsylvania, 581.

Banks and banking. In first constitution, VII; popular discussion of, 65-66, 69, 75-76, 85, 113-114; committee on, 106, 269; article on, 181, 230, 240-241, 425, 428, 432-435, 437-438, 512-516, 521, 523, 524, 544-545, 548, 575, 631; debated, 179, 223-226, 435-437, 438-439, 521-523, 525, 575; resolution on, 215; minority report, 228-232; referendum pro-

SUMMARY OF STATISTICS

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INDEX

- ABOLITIONISTS**, oppose constitution, 86.
- Academies**, and school fund, 70, 72, 577-580.
- Adams, John**, president, 667; on Supreme Court, 615.
- Adams, John Quincy**, cited, 745, 790.
- Addison**, population 1847, 354; representation, 811.
- Address to people of territory**, moved, 596; rejected, 618; reconsidered, 643-645; committee on, 793, 876; reported, 852; adopted, 866.
- Administrative provisions**, popular discussion of, 27-30; committee, 196, 206, 212, 217, 226, 229-230, 243, 250-252, 267, 282, 408, 843; article on, 226, 284, 302-303; revised, 715.
- Advocate**. See Racine.
- Alabama**, area of, 266; veto in, 272.
- Albany (N. Y.)**, railroad to, 37; and Erie Canal, 39.
- Albion**, representation, 808. See also Christiana.
- Alden and Gratten**, newspaper account, 869.
- Aliens**. See Foreigners.
- Alto**, population 1847, 351; representation, 808.
- Amendments**, method, 114, 320, 337; article on, 595, 733-734, 791, 833; debated, 740-741; engrossed, 780; concurred in, 836, 863.
- American Freeman**. See Waukesha.
- Appointments**. See Executive.
- Apportionment**, basis of, 30-31, 100, 628, 631-632; single district system, 428-430, 621-632, 645; for state senators, 521-522; assemblymen, 115, 522-523, 807-811; inequalities of, 552, 596-604, 616, 724-726; article on, 604-607, 618, 645, 807, 863-864, 873-875; debate on, 596-607, 618-619, 836, 844; article reported, 843; amended, 842, 844-845; resolution on, 852; tabled, 875.
- Appropriations**. See Finance and Salaries.
- Apukaway**, population 1847, 352.
- Arbitration**. See Conciliation.
- Arena**, population 1847, 352; representation, 809.
- Arkansas**, precedents from, 272.
- Ashippun**, population 1847, 350; representation, 808.
- Assembly**. See Legislature.
- Attorney General**. See Executive.
- Auburn**, population 1847, 351; representation, 808.
- Auditor**, proposed term for, 30.
- Avon**, population 1847, 353; representation, 810, 845.
- Aztalan**, population 1847, 352; representation, 809.
- BAD River**, population 1847, 352.
- Baird, Dr. Robert**, of Pennsylvania, 561.
- Banks and banking**, in first constitution, VII; popular discussion of, 55-56, 69, 75-76, 85, 113-114; committee on, 196, 206; article on, 181, 230, 240-241, 485, 489, 493-495, 497-498, 515-516, 523, 539, 541, 544-545, 548, 575, 831; debated, 179, 223-225, 483-491, 495-497, 499-518, 524-550, 565, 575; resolution on, 213; minority report, 298-299; referendum pro-

- posed, 537-538; article engrossed, 564.
- Baraboo, population 1847, 354.
- Barrows, Lawrence, printing proposal, 207, 216.
- Baxter, Daniel, guarantor, 207.
- Beall, Samuel W., in first convention, VI, 905; delegate, 176; not reported, VIII; committee member, 206, 306, 453; progressive, 362; absent, 381, 399, 780; presides, 443, 472, 581; motions, 175, 177, 421, 620, 867; motion to adjourn, 471, 491, 712, 723, 779; remarks, 182, 211, 425, 429, 679, 683, 692, 720, 726, 736, 768, 797, 800, 819, 860; resolution on printing, 178, 184, 193, 198, 201, 204, 209, 329, 333, 407, 853; discusses printing, 217, 320-322, 326; remarks on salaries, 252, 255-256, 259, 268, 876; on legal reform, 223; on bill of rights, 275-277, 280, 285, 289-290, 332; on suffrage, 361, 382, 386; on boundary, 457, 478; on exemptions, 473, 750-751, 814; on banking, 493, 502-505, 507, 518, 531, 534-535, 538; on apportionment, 623, 632; on foreign language press, 834, 865; call of convention, 334; query, 337; asks leave, 471; presents petition, 492, 564, 616; sketch, 905.
- Beaubien Case, in Supreme Court, 279.
- Beaver Dam, population 1847, 350; representation, 808.
- Beeman, H. H., deputy sheriff, 813-814.
- Beetown, population 1847, 351; representation, 809, 844.
- Belmont, population 1847, 352; representation, 809, 864.
- Beloit, population 1847, 353; representation, 810, 845.
- Benton, Thomas H., United States senator, 381.
- Benton, population 1847, 352; representation, 809, 864.
- Big Bull, population 1847, 353.
- Biggs, James, delegate, 176; absent, 586, 695, 722, 779; offers resolution on boundaries, 678, 715, 780; speech, 744-748; amendment on representation, 864; sketch, 908.
- Bill of rights, committee on, 196, 206; provisions for, 212-213, 222-223, 227-229, 306, 756; debate on, 275-281, 284-296, 306-316; revision of, 713-714; engrossed, 334; quoted, 97.
- Bird, R. A., printing proposal, 208, 216.
- Bishop, Charles, delegate, 176; committee member, 184, 194, 206, 867; printing report, 198-199; presents petition, 521; offers substitute, 645, 657, 671; motion, 691; absent, 780; remarks on foreign suffrage, 313-315; on legislature, 426; on banking, 535; on public lands, 590; sketch, 909.
- Bishop, Matthew, messenger, 178.
- Black River, vicinity of, 128, 263, 455-456; population 1847, 350.
- Black River Falls, population 1847, 350.
- Blackstone, John W., defeated candidate, 550.
- Blair, T. J., bill of, 833.
- Bliss, Edward, newspaper account, 869.
- Bliss, G. W., newspaper account, 869.
- Bloomfield, population 1847, 354; representation, 811, 863.
- Booth, Sherman, editor, XI, XIII.
- Boundaries, public discussion of, 21-24, 89, 111; Congressional debate on, 119-134, 141-143, 147, 151-152, 158-159, 163; convention committee on, 196, 206; majority report, 229, 241-244, 251; minority report, 262-264; debate, 225, 454-468, 474-480, 744-748,

- 780-791, 823-830; resolution on, 678, 715, 743-748, 780, 789, 828; amended, 792-793; engrossed, 480, 482; division of state reported, 264-266.
- Bowlin, James B., in boundary dispute, 120.
- Boyd, A., guarantor, 207.
- Boyd, Thomas A. B., secretary, resolution of thanks for, 882.
- Bradford, population 1847, 353; representation, 810, 845.
- Bray, William, vote of, 551.
- Bribery. See Suffrage.
- Brigham, J. R., defeated candidate, 178.
- Brighton (Racine County), population 1847, 353; representation, 807, 810, 842, 845, 863-864.
- Brighton (Winnebago County), population 1847, 355.
- Bristol, population 1847, 353; representation, 807, 810, 842, 845, 863-864.
- Brookfield, population 1847, 355; representation, 811.
- Brown, Beriah, printing proposal, 208; compensation for, 858; printing prices of, 859; newspaper account, 869; amended account, 875.
- Brown, E. B., messenger, 175; remuneration, 192.
- Brown, W. W., defeated candidate, 178; heads petition, 812.
- Brown County, delegate, 5, 900; abstract of votes, 191; size, 871; estimated population, 348-350, 356; on judicial circuits, 248, 711, 730, 732; representation for, 521-522, 807-808; in Congressional district, 846; election returns, 874.
- Brownell, George W., from St. Croix County, 89, 127; delegate, 206; committee member, 262; remarks on boundaries, 242, 262-264, 455, 457-458, 464, 474-475, 478-479; on suffrage, 347; on apportionment, 604, 630; moves to adjourn, 468; sketch, 923.
- Brule Lake, Wisconsin boundary, 120, 130, 461, 467, 793.
- Brule River, Wisconsin boundary, 120, 130, 461, 467, 475, 793.
- Brunson, Alfred, letter, 106.
- Buchanan, James, cited, 375, 381, 784.
- Buffalo (N. Y.), railroad to, 37; and Erie Canal, 39; parchment could be bought at, 442-443.
- Burdick, Elisha, guarantor, 207.
- Burlington, mass meeting at, 69-71; population 1847, 353; representation, 807, 810, 842, 845, 863-864.
- Burnett, population 1847, 350; representation, 808.
- Burnt Wood River. See Brule.
- Bushnell, Chester, guarantor, 208.
- Butte des Morts, population 1847, 355.
- Byron, population 1847, 351; representation, 808.
- CAIRO (Ill.), railroad at, 138.
- Calamus, population 1847, 350; representation, 808.
- Caledonia, population 1847, 353; representation, 807, 810, 842, 845, 864.
- Calumet, population 1847, 351; representation, 808.
- Calumet County, delegate, 5, 901; state senator, 115; population, 350, 355-356; on judicial circuits, 248, 711, 730, 732; apportionment for, 521-522, 600-604, 616, 628, 630-632, 807-808; in Congressional district, 846.
- Cambreleng, C. C., *Political Dissertations*, 505.
- Capital punishment, resolution on, 267-284; abolition of, 841.

- Carter, Almerin M.**, delegate, 176; committee member, 206, 645, 713, 716; absent, 523, 722; asks leave, 471; offers resolution, 812, 836; motion, 732, 743; remarks on schools, 229; on judiciary, 243, 252; on legislature, 250; on town officers, 392, 408; on compensation, 596, 618; sketch, 919-920.
- Case, Squire S.**, delegate, 176; committee member, 215, 645, 812, 869-870, 877; presides, 275, 284, 292; presents account, 816; motions, 591, 621, 643, 733, 812, 867, 882; offers resolution, 678, 715; amendment, 628-629, 743, 814; speaks on convention, 186; on suffrage, 212; on state officers, 219; on school fund, 229-230, 241; on printing, 337, 473, 493, 593; on salaries, 469, 492, 523, 540; on expenses, 519, 618, 875; on schools, 576; on apportionment, 596, 599, 618, 620, 627-630; on caucus, 815; on newspapers, 853; votes for, 861, 867-868; sketch, 927.
- Cassville**, population 1847, 351; representation, 809, 844.
- Castleman, Alfred L.**, delegate, 176; committee member, 206, 224, 297-299; presides, 733, 806; absent, 722; asks leave, 540; presents petition, 616, 812; motions, 198, 325, 443, 796, 835, 882; offers amendments, 294, 314, 743; remarks on printing, 182, 203-204, 209; on aid, 195; on reporting, 210, 333, 453; on legislation, 222; on foreigners, 362, 367-368, 377; on slavery, 231; on official terms, 234, 239; on exemption, 286, 296, 777-778, 814-815; on suffrage, 318, 369, 395; on boundary, 470, 479; on banking, 528-532, 546, 548-549, 812; on schools, 576, 579; on internal improvements, 585; on public lands, 588-589; on apportionment, 597, 599, 604, 619, 624; on preëmption, 836; on address to territory, 866; votes for, 867; sketch, 927-928.
- Catlin, John**, secretary, Wisconsin Territory, 1, 191-192; guarantor, 207.
- Census**, report on, 2; laws for, 3-9; abstract of, 220, 232, 260, 282, 299, 337, 348-356; committee on, 299, 348, 591; resolution, 407; of Grant County, 724-726, 850; of St. Croix County, 873.
- Center**, population 1847, 353; representation, 810, 845; division of, 844.
- Centerville**, population 1847, 351; representation, 809, 844.
- Ceresco**, petition of, 240, 297; population 1847, 351; representation, 808.
- Chancery**. See Master in Chancery.
- Chaney, W. F.**, printer, 216.
- Chapin, William D.**, petition of, 320.
- Chapman**. See Hale and Chapman.
- Chase, Warren**, in first convention, VI; delegate, 176; committee member, 194, 196, 199, 206, 392; teller, 861; motions, 177-178, 182, 329, 468, 471, 539, 583, 616, 621, 715, 718, 728, 736-737, 779, 793, 833, 839, 867, 872; calls division, 726; reference to, 281, 651; remarks, 738, 741; on taking testimony, 184-185; on economy, 210-211; on printing, 223, 241-242, 326, 425, 594, 854, 857; on slavery, 232; on governor's term, 234, 236, 239; on term of officers, 273-275; on foreigners, 279; on bill of rights, 286, 291-294, 296; on suffrage, 316, 318, 335, 383, 386, 395; on exemption, 348, 763-764, 769, 774-775, 801, 816-819, 821-822, 840, 853, 867; on militia, 400-401, 409;

- on taxation, 403-405, 413; on internal improvements, 419, 449-450, 472, 581, 583; on legislation, 421, 426-429, 431-432, 436-440; on boundary, 474, 478, 780, 786, 824; on banking, 484, 486, 495, 502, 505-506, 513-514, 518, 532, 542-543, 548, 565, 575, 595; on amendments, 498, 733; on expenses, 520; on apportionment, 552, 598-600, 605, 623, 844, 850, 863-864; on school lands, 554, 556-557; on schools, 559, 571, 576; on public land, 589-590, 741-742; on coat of arms, 596, 618; on judiciary, 610, 613, 634, 642, 671-672, 680, 689, 692-693, 705, 730; on pre-emption, 617; on incorporation, 735; on capital punishment, 841; offers resolutions, 183, 192, 229, 252, 254, 267, 283-284, 299, 870, 875; presents petitions, 473, 593; remarks, 441, 454, 586, 620, 679, 680, 870, 872, 875; calls for division, 619, 695, 738; sketch, 905.
- Chatfield, Levi B., jurist, 703; speech, 309.
- Chester, population 1847, 350; representation, 808.
- Chicago (Ill.), railroad at, 138; parchment to be found at, 443; Larrabee visits, 873.
- Chippewa County, attached to Crawford, 5, 248, 711, 730, 732, 902; census to be taken, 9; no census returns, 350, 356; population, 348-349, 356; apportionment, 115, 521-522, 552, 601, 603-604, 616, 630, 807-808; academy fund, 578.
- Chippewa Indians. See Ojibway.
- Chippewa River, land along, 264, 456; settlements on, 455.
- Christiana and Albion, population 1847, 350; representation, 808.
- Circuit courts. See Judiciary.
- Citizenship, not conferred on negroes, 245; for foreigners, 276-280, 339-347, 358-359, 361, 363-366, 375-380, 390, 395-397. See also Suffrage.
- Claims against state. See Finance.
- Clarence, population 1847, 354; representation, 811.
- Clarkson, representation, 808. See also Cross Plains.
- Clay, Henry, cited, 375, 381.
- Clayton, Thomas, United States senator, 381.
- Cleveland (Ohio), on Lake Erie, 138.
- Clinton, population 1847, 353; representation, 810, 845.
- Clyman, population 1847, 350; representation, 808.
- Coat of Arms, resolution on, 596; report on, 841; cost of design for, 875.
- Cobb, Howell, of Georgia, 119; presides, 130; motion of, 164.
- Coffinberry, C. C., printer, 216.
- Cold Spring, population 1847, 352; representation, 809.
- Cole, Albert G., delegate, 176; presides, 747, 759; offers prayer, 183; committee member, 206; absent, 722, 779-780, 830; asks leave, 469; motions, 534, 628, 806, 812; moves call, 872; presents petition, 593; offers resolution, 747, 852; remarks on rules, 192, 212, 492, 540; on judiciary, 247-250; on lieutenant governor, 258; on suffrage, 382; on officers' pay, 423; on legislature, 436-437; on election date, 438; on journal, 440-441; on banking, 505, 523, 526, 546, 548; on expenses, 519; on apportionment, 844, 863; on address to people, 866; sketch, 916.
- Cole, Orsamus W., delegate, 177; committee member, 206, 217, 226, 303, 715; absent, 334, 628; criticized, 358, 877; motions, 695,

- 728, 747, 868; remark, 358; opinion on governor's term, 235, 238; on suffrage, 319, 347, 361, 385; on single districts, 428; on boundary, 464; on legislature, 471; on banking, 503-504, 506, 534, 548; on schools, 561; on apportionment, 601; on judiciary, 693-694; on exemption, 804, 814; on Congressional districts, 850; sketch, 905-906.
- Colimina, population 1847, 351.
- Collamer, Jacob, Congressman, 153; on land grants, 134, 137-138, 140-143, 145, 150, 154-156; motion of, 161; amendment, 163-164, 167.
- Collection laws. See Debt.
- Colley, Joseph, convention delegate, 176; on committee, 206, 245, 726; motion, 586; absent, 620, 628, 695, 722, 780, 812, 830; sketch, 920.
- Columbia County, delegate, 5, 901; abstract of votes, 191; on third judicial circuit, 248, 682, 711, 730, 732; population, 350, 355-356; representation, 522, 807-808; election returns in, 874.
- "Columbus," name for Wisconsin, 320, 564, 715.
- Columbus, population 1847, 350.
- Common law, in force in state, 874.
- Conciliation courts, power to establish, 676, 696-697.
- Concord, population 1847, 352; representation, 809.
- Congress, proceedings on admission of Wisconsin, VIII, 2, 117-172; confirmed, 302; Act for referred to, 302, 443, 466-467, 477-481, 551, 590-591, 594, 823-825, 829; powers of, 63, 358, 370, 380-381, 384, 386, 420, 464-465; action on boundaries, 225, 241, 262, 458, 460, 462-463, 475, 781, 787-788, 826-828; resolutions for, 196-197, 229, 241-243, 245, 476; policy of, 204; representation in, 167, 172, 625, 849; laws of, 339, 341; appropriations, 835; rejection by, 383-384; preëemption laws in, 617. See also Boundaries, Enabling Act, Preëemption and Public Lands.
- Congressional districts, debated, 167, 172, 625, 846-850.
- Congressional Globe*. See Washington, D. C.
- Conick, W. G., printer, 216.
- Connecticut, and education, 142, 444-445, 447, 569; markets of, 154; area of, 266; veto in, 272.
- Constitution. See Wisconsin Constitution.
- Constitutional Convention (first), size, 107; mistakes of, 179.
- Constitutional Convention (second), elected, VI; size, VI, 4-6, 104-105, 108; coöperation in, 113; hall for, 540; members, 176; credentials, 175-176; biographies of, 900-931; statistics, 931; committees ordered, 183, 196, 212; officers, 6, 177-178, 407, 853, 861; duties, 192, 196, 392; rules governing, 183-184, 187-190, 192, 212, 564, 620-621, 734; plan of progress, 193; salaries, 423, 453, 862, 867, 869-870, 876; evening sessions, 492, 521; roll calls, 884-889; adjournment, 595, 617, 836, 883. See also Contested Seat, and the several committees.
- Constitutional party, proposed, 16.
- Contested seat, 183-186, 550-551, 592, 678, 843; expenses of, 678-679, 813-814, 843. See also William S. Hamilton and John O'Connor.
- Cooley, E. A., newspaper account, 869.
- Corporations, committee on, 196, 206; article on, 595, 734-735, 791,

sent, 183-188, 473, 550-551, 572;
 678; on judicial circuit, 248, 711,
 730, 732; apportionment for, 522,
 807, 808, 804.
 La Grange, population 1847, 384; rep-
 resentation, 811, 838.
 Lake, population 1847, 523; representa-
 tion, 807, 810.
 Lake Michigan and Mississippi, 247;
 road to be built, 523.
 Lake Mills, population 1847, 382; rep-
 resentation, 809.
 Lake Marian, population 1847, 382.
 Lake of the Woods, boundary, 1402,
 745, 780.
 Lake, George W. delegate, 176; com-
 mittee member, 206; absent, 834;
 motions, 471, 505, 617, 678, 716,
 720, 812, 822-823; remarks on
 bill of rights, 212, 222, 206, 208-
 212; on foreigners, 260, 374; on
 debate, 424-425; on suffrage,
 408; on education, 506-507, 670;
 on apportionment, 624-625, 628;
 on judiciary, 687-688, 711-712,
 722, 717-720, 729; on examination,
 774-775, 794, 818-819; on prin-
 ciple, 800; speech, 903.
 Lancaster, Rev. —, service by, 584.
 Lancaster, population 1847, 321; con-
 stituent district, 522; representation,
 809, 841.
 Lancaster Wisconsin Herald, editor,
 XIII; extracts from, 104-106.
 Land grants. See Public lands.
 Langdon, Thomas, vote of, 581.
 Lapham, Francis A., Wisconsin, cited,
 480.
 La Pointe, population 1847, 382.
 La Pointe County, delegate, 6, 823;
 census to be taken, 2; popula-
 tion, 345-349, 352; attached to
 St. Croix County, 248, 711, 730,
 731, 823; apportionment for, 115,
 521-522, 523, 601, 603-604, 616,
 620, 807-808; academy fund for,
 878.

408, 416; remarks on printing,
 103-104, 206, 210, 328, 428, 824;
 on newspapers, 211; on executive,
 217-218, 227, 274; on administration,
 220, 222; on boundaries, 222, 242,
 251, 470-479, 622-624, 629; on
 fugitives, 230; on census, 299,
 522; on legislature, 303-308, 421,
 427, 438; on suffrage, 316; on
 distilling, 425, 624; on militia,
 406; on referendum, 451; on
 banking, 606, 614, 625, 643; on in-
 education, 688, 670, 674; on in-
 ternal improvements, 523; on ap-
 portionment, 528, 609; on amend-
 ments, 734; on corporations, 739;
 on exemption, 797; on public
 lands, 824; on convention matters,
 821, 822, votes for, 821, 827-828;
 speech, 914-916.
 Kinn, Augustus C., delegate, 176;
 committee member, 212; president,
 206, 821; presents petition, 678;
 absent, 441, 512; asks leave, 672;
 motions, 178, 729, 830, 832, 834;
 remarks on suffrage, 282; on
 finance, 401, 419; on distilling,
 422, 606-608; on legislature, 754;
 on banking, 628, 627; on vehicles,
 671, 679; on judiciary, 640-641,
 676, 729-730; on printing, 825,
 829-830; speech, 925-928.
 Kirby, Abner, bill of, 823.
 Knapp, J. G., expenses of, 519-520,
 823.
 Knowlton, Wiram, of Crawford
 County, 465.
 Koskoonong, population 1847, 322;
 representation, 809.
 La Crosse. See Prairie La Crosse.
 La Fayette, population 1847, 324;
 representation, 811, 823.
 La Fayette County, delegate, 6, 809,
 811-813; abstract of votes, 191;
 census returns, 237, 352, 356;
 senator from, 435; contested

- Larkin, Charles H., delegate, 176; committee member, 215; absent, 780; asks leave, 471; motion of, 515, 776, 823, 861, 864; remarks on printing, 241; on governor, 257; on officers' pay, 454; on banking, 547-548, 575; on schools, 576; on exemption, 822; sketch, 915.
- Larrabee, Charles H., cited, 87; delegate, 177, 226; committee member, 183, 251, 595; query, 394; asks leave, 723; presents petition, 852; offers resolution, 747, 845-846; offers amendment, 791, 841, 862; calls for division, 866; motions, 373, 415, 472, 833, 846, 875; remarks, 186, 212, 230, 694, 729; on boundaries, 244, 459, 464; on governor, 253, 274; on printing, 407, 423, 425, 855, 857; on internal improvements, 420; on elections, 438; on engrossing constitution, 442-443; on banking, 537-538; on apportionment, 607, 864; on exemption, 747-750, 759, 768, 800, 820; on counties, 839, 870, 873; sketch, 904.
- Latham, Hollis, delegate, 176; committee member, 206; offers resolution, 861, 867; motion, 845; remarks, 210, 863; on executive, 217-219; on administration, 226-227; on legislature, 303-305; on expenses, 423-442; sketch, 926.
- Lawrence. See Howard.
- Leach (Leech), Lucien B., editor, XIII; newspaper account, 269.
- Lebanon, population 1847, 350; representation, 808.
- Legal reform, necessity of, XII, 59-60, 67-68, 76-79; discussed in convention, 697-708.
- Leggett, William, progressive, 362-363, 749.
- Legislative provisions, popular discussion of, 30-33, 61; committee on, 180, 196, 206, 212, 217, 226, 229-230, 243, 252, 267, 282, 408, 843; article on, 302-305, 426, 428, 430, 436-439; debated, 223-224, 421-422, 426-441, 469-471, 727-728; minority report, 305-306; amendments, 714, 728; postponed, 716; engrossed, 469; concurred in, 793.
- Legislature, size of, 31-33, 111, 426-427; length of sessions, 33, 250, 267, 408; limitations of powers, 251, 267, 643; petitions concerning, 219, 230; emergency meeting, 596, 836; officers of, 736, 837, 841; elections for, 678; elections by, 727-728; and exemption law, 73, 76, 285, 287, 292-293, 297, 750, 764, 767, 771, 777, 794-795, 805.
- Le Roy (Columbia County), population 1847, 350.
- Le Roy (Dodge County), population 1847, 351; representation, 808.
- Lewis, J. H., guarantor, 207.
- Lewis, James T., delegate, 176; committee member, 184, 206, 299, 643, 715; report, 245, 852; offers resolution, 812, 836, 882; amendment, 861; motion, 540; leave of absence, 678; remarks on right of petition, 219, 230; on legislature, 229, 243, 408; on title of laws, 251, 267; on governor, 257; on census, 349; on school funds, 356, 392; on address to people, 596, 618, 643-645; on judiciary, 647-656, 660; sketch, 901-902.
- Lewis, Morgan, governor of New York, 753.
- Libel, and imprisonment, 280.
- Liberty party, resolutions of, 62-63; creed of, 91-95, 98-99.
- Lien laws, amendment on rejected, 840.
- Lieutenant governor, debate on, 253, 257, 259, 268; provision for, 267,

- position on foreigners, 376; on banks, 514, 525, 527, 529-533; on preëmption, 616; affected by apportionment, 623, 627; on Congressional districts, 847-851, members ridiculed, 881.
- De Pere, population 1847, 350.
- Desert Lake, in boundary dispute, 120, 130, 461, 467, 793.
- Des Moines Rapids, identity of, 458.
- Des Moines River, improvement of, 139; land grant on, 140, 144, 156.
- Dickinson, Daniel S., motion of, 130-131.
- Dickinson, Nathaniel, chairman of meeting, 71.
- Dickson, D. Thomas, printer, 216.
- Districting. See Apportionment.
- Division of state, committee report on, 264-266. See also Boundaries.
- Divorce, power to grant, 439.
- Dodge, Gov. Henry, proclamation, VI, VIII, 1, 11; message, 2-3.
- Dodge County, delegates, 5, 88, 903-905; abstract of votes, 191; population, 350-351, 355-356; petition from, 492, 852; remonstrance, 593; on judicial circuit, 248, 682, 711, 730, 732; apportionment for, 521-522, 807-808; in division debate, 872.
- Dodgeville, population 1847, 352; representation, 809.
- Doran, John L., delegate, 176; committee member, 206, 245, 643, 715, 726, 793; motions, 390, 453, 521, 625, 675, 708; offers resolution, 540, 564, 643; remarks, 255, 679; on printing, 208, 220, 327-329; on reporters, 223; on fugitives, 231; on foreigners, 279-280, 378-379, 865; on executive power, 274; on exemption, 287-289, 291, 295-296, 771-772, 803, 821; on taxation, 403-405; on single districts, 429, 625-626; on legislative power, 439-441, 728; on salaries, 454; on banking, 514; on education, 567, 571, 574; on internal improvements, 586; on judiciary, 609-611, 613-615, 633, 658-671, 676, 688-690, 692, 718, 721; on judicial circuits, 730-731; on corporations, 740; on apportionment, 622, 624; on boundary, 827; votes for, 867; sketch, 913.
- Douglas, Stephen A., and boundary, 477, 790.
- Dubays Point, population 1847, 353.
- Duels, disqualification for, 391.
- Duer, William, query of, 155.
- Dunkirk, population 1847, 350; representation, 808.
- Dunn, Charles, delegate, 176, 550; president pro tem, 175; candidate for president of convention, 177; presides, 273; committee member, 184, 206, 595, 715; chairman judiciary committee, 246, 250-251, 608, 610, 612, 614, 639, 705, 720; absent, 393, 780; motions, 678, 716, 729, 830, 836, 861, 867, 883; remarks on printing, 182; on boundaries, 242-243, 780-784, 823-825; on bill of rights, 312; on suffrage, 335-336, 338, 356, 361, 368, 373, 376, 378-381, 865; on officers of legislature, 736-737; on amendments, 734; on Grant County census, 844; on contested seat, 592, 678-679, 813; report on judiciary, 715, 791, 830, 833, 843, 852, 862, 873, 875, 882; remarks on judiciary, 633-636, 646-647, 656, 669, 674, 676, 680, 683-684, 692, 722; sketch, 911-912.
- Dunning, Abel, bill of, 833.
- Dyersburg, population 1847, 350.

- position on foreigners, 376; on
 banks, 614, 625, 627, 629-632; on
 prescription, 618; affected by ap-
 portionment, 628, 627; on Con-
 extensional districts, 647-651,
 members included, 651.
 De Fere, population 1847, 880.
 Desert Lake, in boundary dispute
 120, 126, 461, 467, 732.
 Des Moines Rapids, identity of, 458.
 Des Moines River, improvement of
 139; land grant on, 140, 144,
 156.
 Dickinson, Daniel B., motion of, 156-
 157.
 Dickinson, Nathaniel, chairman of
 meeting, 71.
 Dickson, D. Thomas, printer, 216.
 Districting. See Apportionment.
 Division of state, committee report
 on, 287-288. See also Bound-
 aries.
 Divorce, power to grant, 422.
 Dodge, Gen. Henry, proclamation,
 VI, VIII, 1, 11; message, 2-3.
 Dodge County, delegates, 2, 58, 908-
 909; abstract of votes, 191; popu-
 lation, 230-257, 258-267; petition
 from, 192, 222; remonstrance,
 223; on judicial circuit, 216, 625,
 711, 730, 732; apportionment for,
 621-622, 807-808; in division de-
 bate, 872.
 Dodgeville, population 1847, 322;
 representation, 808.
 Doran, John L., delegate, 176; com-
 mittee member, 208, 245, 642,
 716, 726, 766; motions, 260, 423,
 621, 622, 675, 708; offers resolu-
 tion, 640, 664, 645; remonstrance,
 208, 676; on printing, 208, 726,
 827-828; on reporters, 223; on
 fugitives, 231; on foreigners,
 219-226, 228-275, 665; on exem-
 tion power, 274; on exemption,
 227-230, 231, 236-238, 771-772,
 802, 821; on taxation, 402-405;
 on single districts, 422, 625-628;
 on legislative power, 429-431,
 729; on salaries, 484; on bank-
 ing, 614; on education, 607, 671,
 774; on industrial improvements,
 669; on judiciary, 609-611, 612-
 616, 625, 626-671, 676, 682-690,
 692, 693, 771; on judicial cir-
 cuit, 720-721; on corporations,
 726; on apportionment, 622,
 624; on boundary, 627; votes
 for, 867; elected, 912.
 Douglas, Stephen A., and boundary,
 617, 790.
 Dubuque Point, population 1847, 222.
 Dues, dispensation for, 301.
 Duer, William, survey of, 162.
 Dundick, population 1847, 280; rep-
 resentative, 808.
 Dunn, Charles, delegate, 126, 860;
 president pro tem, 175; candi-
 date for president of convention,
 177; presides, 275; committee
 member, 184, 204, 607, 712;
 chairman, judiciary committee,
 216, 220-222, 608, 619, 612, 614,
 626, 702, 756; absent, 627, 760;
 motions, 676, 716, 722, 620, 726,
 801, 807, 823; remarks on print-
 ing, 182; on resolutions, 242-
 243, 780-784, 812-821; on bill re-
 rights, 612; on suffrage, 822-823,
 826, 828, 867, 868, 872, 876, 878-
 881, 886; on officers of legisla-
 ture, 726-727; on amendments,
 724; on Grant County census,
 844; on organized meet, 602, 675-
 677, 678; reports on judiciary,
 711, 761, 800, 822, 842, 862, 863,
 875, 876, 882; remarks on judic-
 iary, 602-605, 640-641, 652, 653,
 674, 676, 682-684, 692, 726,
 elected, 811-812.
 Dunning, Abel, bill of, 622.
 Dyerburg, population 1847, 209.

- EAGLE**, population 1847, 355; representation, 811.
- East Troy**, population 1847, 354; representation, 811, 863.
- Eau Claire**, population 1847, 353.
- Education**, article on, 480-482, 562-563, 565, 569, 572-573, 576, 580-581, 618, 830-831; reference to, 596, 841; article engrossed, 616, See also Schools, and School Funds.
- Eel River**, and canal, 138.
- Elba**, population 1847, 350; representation, 808.
- Election of 1848**, influence of, 786, 826, 827.
- Elections**. See Legislature, Political Year, and United States Senators.
- Elk Grove**, population 1847, 352; votes of, 551, 813; representation, 809, 864.
- Elkhorn**, population 1847, 354; representation, 811, 863.
- Elkhorn**, *Western Star*, cited, 26-27.
- Elmendorf v. Harris*, cited, 701.
- Eminent Domain**. See Public Property.
- Emmett**, population 1847, 350; representation, 808.
- Enabling Act**, 170-172; resolution on, 678; and boundaries, 744-745, 781, 783. See also Boundaries.
- England**, precedents from, 659, 662-663, 687, 689, 699, 721, 748, 766; treaty with, 789; boundary dispute, 828.
- Engrossment committee**, appointed, 212, 215; reports of, 283, 334, 408, 423, 616, 852, 866.
- Equity practice and legislature**, 720-721.
- Erie Canal**, importance of, 37, 39, 417.
- Erin**, population 1847, 354; representation, 811.
- Escheat**. See Eminent Domain.
- Estabrook**, Experience, delegate, 176; committee member, 184, 206, 306, 764; committee chairman, 713; presides, 455; absent, 722, 780, 830, 872; asks leave, 469; motions, 292, 695, 723; resolutions, 743, 813, 841; remarks on printing, 203, 229, 241-242, 331, 424; on newspapers, 211; on executive, 255, 268, 274; on exemption, 289, 291, 473, 752, 764-768, 770, 798, 801, 802; on suffrage, 318, 382, 387-389; on militia, 410; on civil actions, 421; on apportionment, 435, 606, 619; on legislation, 436-437, 439; on internal improvements, 454; on education, 451, 480-482, 556, 565, 567-572, 579; on banking, 508-510, 527, 530, 545; on judiciary, 609, 611, 674-675; on boundary, 786, 790; on public lands, 835; on county division, 872-873; sketch, 924.
- Evansville (Ind.)**, Wabash canal at, 138.
- Executive**, popular discussion of, 27-30; provisions committee on, 196, 206, 212, 217, 226, 229-230, 243-244, 252, 267, 282, 408, 616, 843; article on, 218-219, 282, 284, 302-303, 862; convention debate on articles, 232-239, 252-260, 268-275; revision, 714-715; powers, 726, 836; consideration of article, 836; engrossed, 837, 843; first term of, 841, 874. See also Salaries and Veto.
- Exemption**, of debtor, popular discussion of, 44-49, 72-73, 76; of homestead, VII, 69-70, 80-82, 102-103; opposition to, 85, 87-88; petitions for, 240, 297, 300, 348, 469, 492, 586, 593, 616, 793; select committee on, 306; debate on, 284-296, 747-779, 793-805, 814-822; resolutions on, 853, 867; article on, 473, 747, 779, 840;

- Establishment, delegates, 175;
committee member, 184, 200, 206,
211; committee chairman, 213;
president, 405; absent, 727, 780,
820, 872; also leaves, 409; no-
tions, 200, 605, 725; resolutions,
145, 512, 521; remarks on prize,
102, 202, 220, 241-242, 241, 224;
on newspaper, 211; on excom-
munications, 224; on excommunication,
229, 231, 473, 725, 744-745, 770,
798, 801, 823; on marriage, 218,
222, 227-230; on militia, 410; on
civil action, 421; on opposition-
ment, 426, 608, 612; on legisla-
tion, 426-427, 429; on internal
improvements, 424; on education,
421, 420-422, 555, 562, 567-572,
573; on banking, 569-570, 577,
580, 545; on judiciary, 609, 611,
674-675; on boundary, 726, 729;
on public lands, 825; on county
division, 872-873; sketch, 924.
- Evansville (Ind.), Wabash canal at,
128.
- Executive, popular discussion of, 27,
30; president committee on, 192,
206, 212, 217, 220, 220-221, 242,
244, 245, 247, 248, 405, 410, 413;
article on, 212-213, 222, 224, 202-
203, 562; convention debate on
articles, 222-223, 222-223, 226,
275; resolution, 714-715; power,
726, 727; consideration of article,
826; engrossed, 827, 843; 843;
term, 841, 874. See also Sal-
aries and Veto.
- Exemption, of debtor, popular dis-
cussion of, 44-45, 72-73, 78; of
homestead, VII, 62-70, 80-82,
102-103; opposition to, 82, 87-88;
provisions for, 246, 247, 299, 348;
402, 422, 566, 592, 610, 723;
select committee on, 200; debate
on, 224-225, 747-770, 771-802,
814-822; resolutions on, 822, 827;
article on, 473, 747, 772, 840.
- Factor, population 1847, 325; repre-
sentation, 811.
- East Troy, population 1847, 324; rep-
resentation, 811, 823.
- East Clinton, population 1847, 323.
- Education, article on, 420-422, 562-
563, 565, 569, 572-573, 670, 580-
581, 618, 620-621; reference to,
566, 841; article engrossed, 616.
- See also Schools and School
Funds.
- Ed River, and canal, 128.
- Edin, population 1847, 320; repre-
sentation, 808.
- Election of 1848, influence of, 726,
820, 827.
- Elections. See Legislature, Political.
- Year, and United States Sen-
ators.
- Elk Grove, population 1847, 322; votes
of, 561, 812; representation, 809,
864.
- Elkhorn, population 1847, 324; repre-
sentation, 811, 823.
- Elphinstone, Western Star, cited, 28-27.
- Elphinstone, or Elphinstone, cited, 101.
- Eminent Domain. See Public Prop-
erty.
- Emmett, population 1847, 320; rep-
resentation, 808.
- Enabling Act, 170-172; resolution on,
678; and boundaries, 744-745,
781, 782. See also Boundaries.
- England, precedents from, 609, 662-
663, 687, 690, 692, 721, 748, 768;
Treaty with, 789; boundary dis-
pute, 828.
- Engrossment committee, appointed,
212, 213; reports of, 222, 224, 408,
422, 618, 822, 823.
- Equality, practice and legislature, 720-
721.
- Eric Canal, importance of, 27, 32,
417.
- Essex, population 1847, 321; repre-
sentation, 811.
- Eschsch. See Eminent Domain.

- adopted, 797; amended, 772, 794, 814; engrossed, 800, 812; reconsidered, 812.
- Ex post facto law.* See Bill of Rights.
- Express.* See Madison.
- FAGAN, James**, delegate, 176; on committee, 206; motion to adjourn, 471, 677; remarks on foreigners, 865; sketch, 926.
- Fairchild, J. C.**, bill of, 833.
- Fairchild**, population 1847, 350; representation, 808.
- Fair Play**, population 1847, 351; representation, 809, 843.
- Farmington**, population 1847, 352; representation, 809.
- Featherstonhaugh, George W.**, delegate, 176; committee member, 206, 245, 643, 645, 715-716; motion, 261; absent, 267, 780, 812, 872; affliction, 299; offers substitute, 738; name on petition, 216; remarks, 194, 442, 876; on boundary, 457, 475; on banking, 575; on apportionment, 600, 602, 631-632; on newspapers, 876; votes for, 861; sketch, 901.
- Federalist*, cited, 667.
- Fees of courts**, debated, 676-677.
- Fennimore**, representation, 809, 844.
- Fennimore Grove**, population 1847, 351.
- Fenton, Daniel G.**, delegate, 176; teller, 177; presides, 588; committee member, 186, 206, 303, 306, 564; motions, 214, 250, 267, 334, 408, 425, 836; absent, 575, 812, 830; asks leave, 523; offers resolution, 194-195, 679, 716, 743; presents petition, 183, 643; remarks on executive, 217; on boundaries, 225, 457-459; on administration, 226; on printing, 306, 320; on apportionment, 603; on amendments, 737; sketch, 902.
- Fever River**, population 1847, 352; representation, 809, 864.
- Ficklin, Orlando B.**, amendment of, 150.
- Finance**, opinion on, 76; committee on, 196, 206; article on, 300-301, 415, 442; debate on, 401, 410-412, 414; article amended, 727. See also Public Debt, and Taxation.
- Fitzgerald, Garrett M.**, in first convention, VI; delegate, 176; committee member, 206; motion to adjourn, 400, 430, 439, 592, 845; absent, 722, 780; remarks on right to prosecute, 229, 252; on exemption, 776, 797-798, 815; on suffrage, 865; sketch, 913.
- Florida**, boundary amendment, 129; area of, 272.
- Folts, Jonas**, delegate, 176; motions, 550, 728, 742, 747; offers substitute, 634; amendment, 861; remarks on census, 220, 232; on exemption, 284, 296, 306, 822; on suffrage, 317; on schools, 571-572; on internal improvements, 586; sketch, 910.
- Fond du Lac**, population 1847, 351; meeting held at, 770; representation, 808.
- Fond du Lac**, on Lake Superior, 475.
- Fond du Lac County**, delegates, 5, 905; abstract of votes, 191; population, 351, 355-356; petitions from, 348, 473, 564, 593, 715; senator, 435; on judicial circuit, 248, 711, 730, 732; apportionment for, 521-522, 807-808, 846; court in, 613; election returns of, 874.
- Fond du Lac Journal**, opinion of, 102-103.
- Fond du Lac Whig**, editor, XIII; selections from, 100-103.
- Foot, Ezra A.**, delegate, 176; committee member, 215; motion, 695, 723, 780; remarks on veto, 257;

- adopted, 797; amended, 775, 794;
 814; engrossed, 800, 812; recom-
 mended, 812.
 Ex post facto law, See Bill of Rights.
 Express, See Mailman.
 FADAM, James, delegate, 178; on com-
 mittee, 206; motion to adjourn,
 471, 577; remarks on foreigners,
 833; sketch, 928.
 Fairbanks, J. C., bill of, 232.
 Fairbanks, population 1847, 850; rep-
 resentative, 808.
 Fair Play, population 1847, 851;
 representative, 808, 812.
 Farmington, population 1847, 852;
 representative, 808.
 Featherstonhaugh, George W., dele-
 gate, 178; committee member,
 206, 245, 442, 715-716; mo-
 tion, 201; absent, 207, 780, 812.
 572; amendment, 209; offers substi-
 tute, 738; name on petition, 218;
 remarks, 194, 442, 876; on bound-
 ary, 427, 478; on banking, 876;
 on apportionment, 600, 602, 631;
 632; on newspapers, 876; votes
 for, 601; sketch, 937.
 Federalist, cited, 607.
 Fees of courts, debated, 676-677.
 Fernmore, representative, 808, 844.
 Fernmore Grove, population 1847,
 851.
 Fenton, Daniel G., delegate, 176;
 father, 177; president, 288; com-
 mittee member, 186, 206, 207, 208,
 664; motions, 214, 220, 287, 334,
 408, 420, 836; absent, 278, 812,
 830; asks leave, 623; offers reso-
 lution, 184-186, 676, 716, 742; pre-
 sents petition, 185, 843; remarks
 on executive bill; on postmaster,
 235, 437-439; on administration,
 328; on printing, 208, 320; on
 apportionment, 602; on amend-
 ments, 747; sketch, 902.
 Fever River, population 1847, 852;
 representative, 808, 854.
 Ficklin, Orlando B., amendment of,
 180.
 Finance, opinion on, 78; committee
 on, 186, 206; article on, 200-201,
 415, 442; debate on, 401, 410-412,
 414; article amended, 727. See
 also Public Debt, and Taxation.
 Fitzgerald, Gerrit M., in first con-
 vention, VI; delegate, 176; com-
 mittee member, 206; motion to
 adjourn, 200, 430, 432, 442;
 absent, 722, 780; remarks on
 rights to proceeds, 220, 221; on
 exemption, 776, 797-798, 812; on
 railways, 802; sketch, 914.
 Florida, boundary amendment, 129;
 vote of, 272.
 Folger, James, delegate, 176; motions,
 606, 726, 742, 747; offers substi-
 tute, 623; amendment, 801; re-
 marks on census, 220, 232; on
 exemption, 224, 206, 823; on
 railways, 817; on schools, 871-
 873; on internal improvements,
 188; sketch, 910.
 Fond du Lac, population 1847, 851;
 meeting held at, 170; representa-
 tive, 808.
 Fond du Lac, on Lake Superior, 478.
 Fond du Lac County, delegate, 2,
 905; abstract of votes, 121; pop-
 ulation, 321, 322-323; petitions
 from, 248, 478, 504, 522, 715; sen-
 ator, 435; on judicial circuit,
 248, 711, 736, 737; apportion-
 ment for, 221-222, 267-268, 846;
 court in, 612; election returns of,
 674.
 Fond du Lac, former opinion of, 103-
 106.
 Fond du Lac Whig, editor, XIII;
 selections from, 100-106.
 Foot, Ezra A., delegate, 176; commit-
 tee member, 212; motion, 602,
 722, 780; remarks on vote, 607;

- on bill of rights, 294; on school fund, 407, 425; on schools, 576; on governor, 596, 618; on division of town, 844; sketch, 921.
- Foreigners, suffrage for, 75, 317-319, 338-347, 359-361, 364-381, 390, 396; property rights of, 275-280, 294, 314-316.
- Forest, population 1847, 351; representation, 808.
- Fort Winnebago, grant of, 443, 741.
- Fourierism, discussion on, 24-26; in convention, 802.
- Fowler, Albert, delegate, 176; on committee, 215, 833; committee report, 833-834, 869-870, 875-877; presents petition, 469; absent, 334, 797; remarks on stationery, 492; on expenses, 519-520; on printing, 859; sketch, 913-914.
- Fox, Rev. Matthew, prayer by, 262.
- Fox, William H., delegate, 176; committee member, 206, 564; motion, 731; calls for division, 843; absent, 628, 695, 722, 780; remarks on printing, 193; on records, 222; on foreigners, 294, 317, 345, 359, 369, 865; on exemption, 296; on taxation, 360, 367; on internal improvements, 302, 417-418, 426, 581, 584-585; on districting, 429; on banking, 533; votes for, 861, 867; sketch, 902-903.
- Fox Lake, population 1847, 350; representation, 808.
- Fox River (town), population 1847, 352.
- Fox River, route, 136; improvement of, 582-583; land grant for, 141, 157, 160-161, 165, 170, 229, 420, 862; petition for, 564; debate on, 741-743; resolution, 862. See also Public Lands.
- Franklin (Iowa County), representation, 809.
- Franklin (Milwaukee County), population 1847, 353; representation, 807, 810.
- Fredonia, population 1847, 354; representation, 811.
- Free Soil party, origin, XII.
- Fulton, population 1847, 353; representation, 810, 845.
- GALE, George, delegate, 176; committee member, 206; motions, 192, 281, 335, 405, 720, 723; offers petition, 320; amendment, 671; absent, 441, 780; remarks, 184, 187, 209-210, 221; on printing, 213, 217, 333, 855-857; on banking, 223, 230; on boundaries, 244; on judiciary, 250, 638-640, 656-657, 695-696, 706; on executive, 258, 268; on veto power, 272; on bill of rights, 275; on foreigners, 278; on suffrage, 378, 397-398; on internal improvements, 412, 583; on foreign language printing, 865-866; on county division, 871-872; sketch, 925.
- Gayle, John, on admission of Wisconsin, 125.
- General land office, certificate from, 162, 166, 171. See also Public Lands.
- Genesee, population 1847, 355; representation, 811.
- Geneva, population 1847, 354; representation, 811, 863.
- Georgia, area of, 266; land prices in, 149; precedents from, 66.
- Germans, constitution in their language, 834, 865.
- Germantown, population 1847, 354; representation, 811.
- Gerrymandering, danger of, 622, 626-627.
- Getty, William T., votes for, 178.
- Gifford, Peter D., delegate, 176; motions, 468, 723, 725; presents petition, 586; amendments, 861; ab-

- sent, 872; remarks, 618, 876; on banking, 213, 230, 524; on right of petition, 217; on veto, 255; on suffrage, 344; on taxation, 366; on elections, 423, 441; on printing, 493, 540; on schools, 572; on apportionment, 600, 629; sketch, 928-929.
- Gillette, J. M., editor, XI, XIII.
- Goade, Charles, vote of, 551.
- Goggin, William F., motion of, 164.
- Goodhue, James M., editor, XI, XIII; account, 869.
- Governor. See Executive and Salaries.
- "Graduation," technical term, 138; favored, 148-149. See also Public Lands.
- Grafton, population 1847, 354; representation, 811.
- Grain grinding, tolls for, 474, 493, 643.
- Grand Rapids, population 1847, 353.
- Grant County, delegates, 4, 905-907; opinion on first constitution, 104, 110-111; abstract of votes, 191; population, 351, 355-356, 724-726, 850; land in, 277; on judicial circuit, 248, 711, 730, 732; apportionment for, 521-522, 552-553, 625-626, 807, 809, 843-844.
- Granville, population 1847, 353; representation, 808, 810.
- Gratiot, population 1847, 352; representation, 809, 864.
- Gratten. See Alden and Gratten.
- Grayson, William J., Virginia Congressman, 788-789.
- Great Britain. See England.
- Green Bay, in boundary dispute, 21, 120, 130, 461, 467, 793; water route, 136, 157, 741.
- Green Bay (city), population 1847, 350; elections in, 657; newspapers of, 770; on county division, 871.
- Green County, delegates, 5, 908; abstract of votes, 191; population, 351, 355-356; on judicial circuit, 247, 682, 711, 730, 732; apportionment for, 522, 807, 809, 846.
- Green Lake, population 1847, 352.
- Greenfield (Dane County), population 1847, 350; representation, 808.
- Greenfield (Milwaukee County), population 1847, 353; representation, 807, 810.
- Greenville, population 1847, 351.
- Griffin, J. M., guarantor, 208.
- "Guillaume" of East Troy, article by, 98-99.
- HALE and Chapman, bill of, 833.
- Hall, T. W., guarantor, 208.
- Hamilton, William S., petition of, 183-184; papers presented, 473; report on, 550-551; address by, 592; allowed mileage, 643; expenses, 678-679, 813-814, 843.
- Harrington, James, delegate, 176; absent, 722, 780; resolution on doorkeeper, 852, 867; remarks on capital punishment, 267, 284; on legislative, 439; on banks, 536; on internal improvements, 586; sketch, 925.
- Harris, Mathew, vote of, 551.
- Hartford, population 1847, 354; representation, 811.
- Harvey, Louis P., delegate, 176; committee member, 206; motion, 628; absent, 575, 586, 780, 797, 830, 872; remarks, 220, 442-443, 474, 493, 691, 729; on printing, 223, 326, 854, 856-857, 860, 868, 879; on exemptions, 251, 267, 815-816; on executive, 258; on bill of rights, 335; on suffrage, 384, 386, 398, 400; on districting, 429; on schools, 447-449, 560, 578-579; on right of petition, 521, 540; on banking, 539; on apportionment, 630, 632; on

- expenses, 680; on legal reform, 697-708; on lien laws, 840; votes for, 861; sketch, 921-922.
- Hathaway and Hurd, account, 833.
- Hazel Green, population 1847, 351; representation, 809, 843.
- Head of Platte, population 1847, 351; representation, 809, 843.
- Hebron, population 1847, 352; representation, 809.
- Hill, Nicholas, ex-commissioner of New York, 77.
- Holcombe, William, report of, 266; on boundaries, 458.
- Hollenbeck, Stephen P., delegate, 176; on committee, 215, 869-870; absent, 471, 575, 722, 779, 797; excused, 723; votes for, 867; sketch, 909.
- Hollman, Frederick, sergeant at arms pro tem, 175; votes for, 178; compensation, 780.
- Holt, Benjamin, proprietor *Wisconsin Argus*, 178, 207, 209, 425. See also Tenney, Smith and Holt.
- Holt, Charles, guarantor, 207; petition of, 216.
- Holt, David Jr., account allowed, 876.
- Homestead exemption. See Exemption.
- Houston, John W., of Delaware, 129, 138.
- Howard and Lawrence, population 1847, 350.
- Hubbard, population 1847, 350; representation, 808.
- Hudson, population 1847, 354; representation, 811, 863.
- Huginin, Edgar R., sergeant at arms, 178.
- Hunker faction, of Democrats, XII. See also Democratic Party.
- Hurd. See Hathaway and Hurd.
- Hurricane, population 1847, 351; representation, 809, 844.
- Hustisford, population 1847, 350; representation, 808.
- Hyer, George, editor, XI, XII; newspaper account, 869.
- ILLINOIS, northern boundary of, 21, 119-120, 123, 130, 152, 229, 461-463, 467-468, 477-478, 746, 787, 789, 793, 829; not desired in Wisconsin, 22-23; size, 132, 266, 417; land grant, 158, 168; precedents from, 204, 272, 339, 419, 428, 553, 658, 687; constitution of, 341, 361-364, 375, 377-378, 438, 873; internal improvements, 419; legislature, 428; admission to Union, 3, 476, 479, 828; opposes Wisconsin, 826.
- Illinois Canal, construction of, 138.
- Impeachment. See Legislative.
- Incorporations. See Corporations.
- Indemnity, claim for, 251. See also Boundaries.
- Indian lands, voters on, 837, 867.
- Indiana, size of, 132, 266; boundary, 123, 152; canal in, 138; land grant, 156; territory of, 262, 461, 463, 467, 476; veto in, 272.
- Indians, as citizens, 97; title to land, 229, 245, 737-738; boundary, 789; suffrage for, 114, 334, 382, 393; not granted, 303.
- Interest, fixing rates, 474, 493, 643.
- Internal improvements, by Congress, 3; opinions on, 37-39; land grants for, 135-146, 148-149, 152-158, 160, 164-165, 167-171; resolution on, 196-197; committee on, 196, 206; minority report, 302; article, 301, 415-416, 418-419, 426, 583, 585-588, 727; debated, 416-421, 443-453, 472, 581-587; article engrossed, 591.
- Iowa, boundary, 129, 463, 790, 829; land grant, 140, 144, 156-157; representation, 809.
- Iowa County, delegates, 5, 909; abstract of votes, 191; population, 351-352, 355-356; petition from,

- 469, 616; on judicial circuit, 248, 711, 730, 732; apportionment for, 522, 807; election returns, 874.
- Ireland, conditions in, 748; emigrants from, 771.
- Iskodewaba River. See Rum River.
- Ixonia, population 1847, 352; representation, 809.
- JACKSON, Pres. Andrew, makes land grants, 137; veto, 254, 269, 272.
- Jackson, Andrew B., delegate, 176; committee member, 206; presides, 400, 415; absent, 780, 812; motions, 178, 239, 275, 574-575, 586, 659, 680, 722, 778, 837, 843; remarks on newspapers, 211; on governor, 256; on foreigners, 317-318, 335, 379, 381; on suffrage, 389; on senators, 433; on salaries, 436, 454; on education, 452, 555, 557-558, 561-562, 566, 572; on boundaries, 465, 475, 479; on banking, 506, 515, 531, 538, 564-565; on apportionment, 607, 726, 845; on judiciary, 637-638; on address to people, 644; on exemption, 768-769, 804; on printing, 856-857, 860; on foreign language newspapers, 865; votes for, 867; sketch, 917.
- Jackson, population 1847, 354; representation, 811.
- Jamestown, population 1847, 351; representation, 809, 843.
- Janesville, population 1847, 353; representation, 810, 845.
- Jefferson, Thomas, quoted, 62; administration, 53, 666-667; opinion on banks, 424; approved constitution, 434; and judiciary, 615; *Manual* used, 189, 440.
- Jefferson, population 1847, 352.
- Jefferson County, delegates, 5, 88, 910-911; abstract of votes, 191; population, 352, 355-356, 432; on judicial circuit, 248, 682, 711, 730, 732; apportionment for, 522, 724, 726, 807, 809, 846; in division debate, 872.
- Jillson, J. B., secretary Liberty convention, 63.
- Johnson, Daniel N., doorkeeper pro tem, 596; account of, 875; remuneration for, 882.
- Johnson, Robert W., of Arkansas, 162.
- Johnstown, population 1847, 353; representation, 810, 845.
- Jones, David W., expenses, 813-814.
- Jones, George, secretary of meeting, 71.
- Jones, George W., of Tennessee, 151.
- Jones, Milo, delegate, 176; on committee, 196, 206; absent, 471; sketch, 910.
- Journal of the convention, 173-883; distribution of, 716, 812. See also Printing.
- Judd, Stoddard, in first convention, VI; delegate, 175-176; not reported, VIII; committee member, 177, 206, 306, 715, 867; presides, 223; motions, 244, 255, 260, 296, 299, 333-334, 493, 540, 695, 722-723, 727, 733, 742, 780, 866; query, 200, 337; remarks, 181, 185-187, 193-195, 414, 564, 621, 678, 684, 689, 691, 726, 733, 737-738, 776, 800, 814, 819, 851, 854, 872; on printing, 199, 202, 242-243, 245, 322-325, 332, 407, 437, 856-859, 877-881; on executive, 217-219, 236-237, 239, 274; on fugitives, 232; on veto, 253, 270, 272-273; on lieutenant governor, 258; on foreigners, 279-280, 396; on exemption, 287, 289, 293, 404, 751-758, 772; on legislation, 305, 470-471, 473; on suffrage, 389, 394, 398, 400; on taxation, 410, 412-413; on districting, 429, 435, 629; on boundary, 459; on banking, 489-491, 498, 505-506, 546; on educa-

- tion, 570-571, 573-574; on internal improvements, 587; on public lands, 588-589; on apportionment, 598-600, 619, 623-624; on judiciary, 611; on address to the people, 644; on married women's rights, 840; on permanent adjournment, 618; on legislation, 727-728; votes for, 861, 867-869; sketch, 903.
- Judicial circuits**, arranged, 247-248, 711, 730-732.
- Judiciary**, public discussion of, 33-36, 76, 112, 114, 166, 172; committee on, 180, 196, 206, 214, 229, 243, 251; article, 112, 179, 246-250, 708-712, 716-717; elective system, 640, 652, 693-694, 716; debate on, 223-224, 252, 306-313, 607-615, 633-642, 645-677, 680-708, 716-722, 729-733; article adopted, 747, 793; amended, 792; engrossed, 743. See also Supreme Court.
- Justices of the Peace**. See Judiciary.
- KAUKALIN**, population 1847, 350.
- Kellogg**, Louise Phelps, aid acknowledged, VIII.
- Kennedy**, William H., delegate, 206; offers amendment, 737, 837; absent, 334, 812; remarks on Indian title, 229, 243; on bill of rights, 313; on election date, 438; on state prison, 443, 469; on boundary, 465; on expenses, 520; on school superintendent, 565; sketch, 916.
- Kenosha**. See Southport.
- Kent**, James, jurist, 686, 753; cited, 745; opinion, 784, 786, 790.
- Kentucky**, land prices in, 149; boundary, 152; area of, 266; veto in, 272; precedents from, 666-667, 683.
- Kilbourn**, Byron, delegate, 176; committee member, 177, 206; absent, 312, 830; motions, 175, 225, 260, 471; takes appeal, 618; offers amendment, 691, 695-696; accepts amendment, 737; remarks, 192, 737, 742, 784; on length of session, 179-182, 194; on contested seat, 185-186; on printing, 204, 241, 321-322, 324, 330, 424; on bill of rights, 226-229, 315; on banking, 223, 497-499, 501-503, 505, 511-517, 525, 533, 538, 540-543, 545-548; on fugitives, 230-231; on executive, 235, 253, 257, 259; on boundaries, 241-242, 466, 478-479, 787; on veto, 254; on suffrage, 245-246, 316-317, 335, 383-384, 388, 394-398, 408, 865; on foreigners, 276, 280, 314; on militia, 283, 401; on exemption, 291, 750-752, 759, 772-774; on eminent domain, 301; on internal improvements, 301, 450-451, 587; on acceptance act, 302, 454-455; on finance, 300-301, 401, 411-412, 414; on taxation, 402-404, 413; on legislature, 431, 436, 736; on districting, 422, 432; on elections, 438, 441; on divorce, 439; on education, 553-554, 557, 559, 561-562, 571, 573, 577; on amendments, 595, 734; on apportionment, 599-600, 602, 606, 619, 621, 624, 724-725; on judiciary, 607-610, 612, 633, 641-642, 657, 673, 675-676, 695-696, 705, 720; on rules, 620; on address to people, 644; on corporations, 738-739; sketch, 914.
- King**. See Ludington and King; Wilson and King.
- King**, Rufus, editor, XIII; delegate, 176; committee member, 177, 206, 303, 349, 453, 595, 867; presides, 606, 633, 659, 680, 689, 836, 871; presents petition, 215-216; motions, 468, 472, 492, 505, 592, 689, 728, 734-736, 843, 881; queries,

- 408, 414; remarks on printing, 193-194, 205, 210, 333, 423, 824; on newspapers, 211; on executive, 217-219, 257, 274; on administration, 226; on boundaries, 229, 243, 251, 476-479, 823-824, 826; on fugitives, 230; on census, 299, 553; on legislature, 303-305, 421, 427, 436; on suffrage, 316; on districting, 428, 624; on militia, 409; on referendum, 441; on banking, 506, 514, 525, 548; on education, 568, 570, 574; on internal improvements, 583; on apportionment, 598, 606; on amendments, 734; on corporations, 739; on exemption, 797; on public lands, 834; on convention matters, 551, 882; votes for, 861, 867-868; sketch, 914-915.
- Kinne, Augustus C.**, delegate, 176; committee member, 215; presides, 806, 831; presents petition, 678; absent, 441, 812; asks leave, 872; motions, 175, 729, 830, 832, 834; remarks on suffrage, 388; on finance, 401, 412; on districting, 433, 605-606; on legislature, 734; on banking, 535, 537; on schools, 571, 579; on judiciary, 640-641, 676, 729-730; on printing, 855, 859-860; sketch, 925-926.
- Kirby, Abner**, bill of, 833.
- Knapp, J. G.**, expenses of, 519-520, 833.
- Knowlton, Wiram**, of Crawford County, 465.
- Koshkonong**, population 1847, 352; representation, 809.
- LA CROSSE**. See *Prairie La Crosse*.
- La Fayette**, population 1847, 354; representation, 811, 863.
- Lafayette County**, delegates, 5, 660, 911-913; abstract of votes, 191; census returns, 337, 352, 356; senator from, 435; contested seat, 183-186, 473, 550-551, 572, 678; on judicial circuit, 248, 711, 730, 732; apportionment for, 522, 807, 809, 864.
- La Grange**, population 1847, 354; representation, 811, 863.
- Lake**, population 1847, 353; representation, 807, 810.
- Lake Michigan and Mississippi Railroad**, to be built, 583.
- Lake Mills**, population 1847, 352; representation, 809.
- Lake Moriah**, population 1847, 352.
- Lake of the Woods**, boundary, 462, 745, 789.
- Lakin, George W.**, delegate, 176; committee member, 206; absent, 334; motions, 471, 595, 617, 679, 716, 720, 812, 822-823; remarks on bill of rights, 212, 222, 296, 306-312; on foreigners, 369, 374; on debates, 424-425; on suffrage, 408; on education, 566-567, 570; on apportionment, 624-625, 628; on judiciary, 657-658, 671-672, 692, 717-720, 729; on exemption, 774-775, 794, 818-819; on printing, 860; sketch, 906.
- Lancaster, Rev. —**, service by, 564.
- Lancaster**, population 1847, 351; census incorrect, 552; representation, 809, 844.
- Lancaster Wisconsin Herald**, editor, XIII; excerpts from, 104-106.
- Land grants**. See *Public Lands*.
- Langton, Thomas**, vote of, 551.
- Lapham, Increase A.**, *Wisconsin*, cited, 480.
- La Pointe**, population 1847, 352.
- La Pointe County**, delegate, 5, 923; census to be taken, 9; population, 348-349, 352; attached to St. Croix County, 248, 711, 730, 732, 923; apportionment for, 115, 521-522, 552, 601, 603-604, 616, 630, 807-808; academy fund for, 578.

sent, 183-186, 475, 550-551, 575.
 678; on judicial circuit, 546, 711,
 730, 732; appointment for, 522,
 597, 602, 604.
 La Grange, population 1847, 354; rep-
 resentative, 511, 553.
 Lake, population 1847, 353; represen-
 tative, 507, 510.
 Lake Michigan and Mississippi Rail-
 road to be built, 553.
 Lake Mills, population 1847, 353; rep-
 resentative, 509.
 Lake Mohawk, population 1847, 353.
 Lake of the Woods, boundary, 1402,
 145, 150.
 Lake George W. delegate, 175; com-
 mittee member, 206; absent, 334;
 motions, 471, 565, 517, 570, 716,
 720, 812, 822-823; remarks on
 bill of rights, 513, 523, 596, 598-
 512; on foreigners, 555, 574; on
 debates, 424-425; on suffrage,
 408; on education, 509-517, 570;
 on appointments, 524-525, 532;
 on judiciary, 557-558, 571-572,
 592, 717-720, 723; on examination,
 774-775, 794, 818-819; on prin-
 ciple, 802; sketch, 503.
 Lancaster, New York, service by, 504.
 Lancaster, population 1847, 351; rep-
 resentative, 553; representation,
 509, 545.
 Lancaster, Wisconsin Herald, editor,
 XIII; extracts from, 194-195.
 Land grants. See Public lands.
 Langdon, Thomas, vote of, 551.
 Lapham, Francis A., Wisconsin, cited,
 450.
 La Pointe, population 1847, 352.
 La Pointe County, delegate, 5, 523;
 census to be taken, 9; popula-
 tion, 545-549, 552; attached to,
 St. Croix County, 546, 711, 730,
 783, 823; appointment for, 115,
 551-552, 555, 591, 593-594, 616,
 630, 607-608; academy fund for,
 678.

408, 114; remarks on printing,
 193-194, 205, 210, 323, 423, 524;
 on newspapers, 211; on executive,
 217-219, 227, 274; on administra-
 tion, 228; on boarders, 230, 243,
 251, 476-479, 523-524, 525; on
 fugitives, 230; on census, 239,
 552; on legislation, 303-305, 421,
 427, 436; on suffrage, 310; on
 taxation, 428, 524; on militia,
 430; on referendum, 441; on
 banking, 506, 514, 525, 543; on
 education, 553, 570, 574; on in-
 ternal improvements, 583; on ap-
 portionment, 593, 606; on amend-
 ments, 734; on corporations, 739;
 on exemption, 797; on public
 lands, 824; on convention matters,
 831, 832; votes for, 551, 567-568;
 sketch, 514-515.
 Linn, Augustus C., delegate, 175;
 committee member, 215; president,
 206, 521; previous position, 478;
 absent, 441, 512; asks leave, 572;
 motions, 193, 725, 580, 592, 594;
 remarks on suffrage, 324; on
 finance, 401, 412; on distribution,
 422, 505-506; on legislation, 734;
 on banking, 525, 537; on schools,
 571, 579; on judiciary, 540-541,
 570, 720-720; on printing, 555,
 558-560; sketch, 523-525.
 Kirby, Almon, bill of, 593.
 Knapp, J. G., expenses of, 516-520,
 525.
 Knowlton, William, of Crawford
 County, 455.
 Koshkonong, population 1847, 352;
 representation, 509.
 La Crosse. See Prairie La Crosse.
 La Fayette, population 1847, 354;
 representation, 511, 553.
 Lafayette County, delegate, 5, 550,
 511-513; abstract of votes, 191;
 census returns, 357, 352, 355;
 senator from, 435;

- Larkin, Charles H.**, delegate, 176; committee member, 215; absent, 780; asks leave, 471; motion of, 515, 776, 823, 861, 864; remarks on printing, 241; on governor, 257; on officers' pay, 454; on banking, 547-548, 575; on schools, 576; on exemption, 822; sketch, 915.
- Larrabee, Charles H.**, cited, 87; delegate, 177, 226; committee member, 183, 251, 595; query, 394; asks leave, 723; presents petition, 852; offers resolution, 747, 845-846; offers amendment, 791, 841, 862; calls for division, 866; motions, 373, 415, 472, 833, 846, 875; remarks, 186, 212, 230, 694, 729; on boundaries, 244, 459, 464; on governor, 253, 274; on printing, 407, 423, 425, 855, 857; on internal improvements, 420; on elections, 438; on engrossing constitution, 442-443; on banking, 537-538; on apportionment, 607, 864; on exemption, 747-750, 759, 768, 800, 820; on counties, 839, 870, 873; sketch, 904.
- Latham, Hollis**, delegate, 176; committee member, 206; offers resolution, 861, 867; motion, 845; remarks, 210, 863; on executive, 217-219; on administration, 226-227; on legislature, 303-305; on expenses, 423-442; sketch, 926.
- Lawrence.** See Howard.
- Leach (Leech), Lucien B.**, editor, XIII; newspaper account, 269.
- Lebanon**, population 1847, 350; representation, 808.
- Legal reform**, necessity of, XII, 59-60, 67-68, 76-79; discussed in convention, 697-708.
- Leggett, William**, progressive, 362-363, 749.
- Legislative provisions**, popular discussion of, 30-33, 61; committee on, 180, 196, 206, 212, 217, 226, 229-230, 243, 252, 267, 282, 408, 843; article on, 302-305, 426, 428, 430, 436-439; debated, 223-224, 421-422, 426-441, 469-471, 727-728; minority report, 305-306; amendments, 714, 728; postponed, 716; engrossed, 469; concurred in, 793.
- Legislature**, size of, 31-33, 111, 426-427; length of sessions, 33, 250, 267, 408; limitations of powers, 251, 267, 643; petitions concerning, 219, 230; emergency meeting, 596, 836; officers of, 736, 837, 841; elections for, 678; elections by, 727-728; and exemption law, 73, 76, 285, 287, 292-293, 297, 750, 764, 767, 771, 777, 794-795, 805.
- Le Roy (Columbia County)**, population 1847, 350.
- Le Roy (Dodge County)**, population 1847, 351; representation, 808.
- Lewis, J. H.**, guarantor, 207.
- Lewis, James T.**, delegate, 176; committee member, 184, 206, 299, 643, 715; report, 245, 852; offers resolution, 812, 836, 882; amendment, 861; motion, 540; leave of absence, 678; remarks on right of petition, 219, 230; on legislature, 229, 243, 408; on title of laws, 251, 267; on governor, 257; on census, 349; on school funds, 356, 392; on address to people, 596, 618, 643-645; on judiciary, 647-656, 660; sketch, 901-902.
- Lewis, Morgan**, governor of New York, 753.
- Libel**, and imprisonment, 280.
- Liberty party**, resolutions of, 62-63; creed of, 91-95, 98-99.
- Lien laws**, amendment on rejected, 840.
- Lieutenant governor**, debate on, 253, 257, 259, 268; provision for, 267,

- 282-283; term of, 841, 874. See also Executive.
- Lima, population 1847, 353; representation, 810, 845.
- Lincoln, Abraham, speech on public lands, 167-169.
- Linn, population 1847, 354; representation, 811, 863.
- Lisbon, population 1847, 355; representation, 811.
- Little Bull, population 1847, 353.
- Loco-foco faction, of Democrats, XII.
- Lord, Rev. Charles, prayer by, 196, 206, 261, 337, 348, 469, 473, 586, 592, 713, 724, 869; compensation for, 870.
- Louisiana, area of, 266.
- Lovell, Frederick S., in first convention, VI; delegate, 176; committee member, 186, 206, 595, 867; reports, 282, 284, 302-303, 521-523, 732, 807, 837-839; presides, 213; absent, 381, 780; motions, 563, 620, 645, 722, 842, 875; offers amendments, 711, 721, 726, 731-732, 735, 820; query, 441; remarks, 175, 181, 184, 192, 200, 212, 423; on printing, 201, 204, 329, 437, 853-854, 858; on executive, 217-219; on bill of rights, 222, 313; on administration, 226; on governor, 233, 238, 255, 274; on legislature, 253-254, 421, 426-427, 430, 432-433, 435, 469-470; on lieutenant governor, 257-258, 267; on foreigners, 279-280, 318; on exemption, 290, 405, 413, 777, 822; on suffrage, 335, 382, 395; on revision, 320, 337; on finance, 403-404, 414; on militia, 409; on elections, 438; on internal improvements, 443-444, 446, 451-452, 472; on boundaries, 477, 788-790, 825-827; on banking, 490-491, 547; on expenses, 520; on rules, 540, 564, 618, 621; on apportionment, 552, 597, 600, 616, 630-631, 724; on school lands, 444-447, 554-555, 557-558, 570; on education, 565, 574, 577-578, 581, 618; on judiciary, 613, 685-688, 690, 721-722; on corporations, 739; on foreign language newspapers, 866; on division of counties, 870, 872-873; votes for, 861, 867-868; sketch, 917.
- Lowell, population 1847, 351; representation, 808.
- Lowville, population 1847, 350.
- Ludington and King, bill of, 833.
- LyBrand, Jacob, petition of, 245.
- Lyman, Samuel W., delegate, 176; committee member, 715; offers resolution, 728, 812; presents petition, 492; remarks on engrossing constitution, 392, 408; votes for, 867; sketch, 904-905.
- McClellan, Samuel R., delegate, 176; committee member, 206; absent, 722, 780, 812; motion, 866; remarks on judiciary, 247-250; on exemption, 290, 799; on bill of rights, 294; on foreigners, 315; on banking, 494, 496, 498-500, 503, 505-506, 515, 517, 538, 542-543, 545; on schools, 567; on apportionment, 605, 843; sketch, 917-918.
- McClernand, John A., Congressman, 141, 147-148; motion of, 162.
- McConnell, L., votes for, 178.
- McDowell, William, delegate, 177; committee member, 206; leave of absence, 733; motion, 695, 722; remarks on legislature, 235, 470; on citizenship, 245; on foreigners, 343; on schools, 452, 576; on boundary, 465; sketch, 908.
- McGannegal, William, votes for, 550.
- McHugh, Thomas, secretary, 175, 178, 883; letter from, 206; pay of, 861, 869-870; resolution of thanks for, 882.

- McLane, Robert M., Congressman, 123-124, 129.
- Madison, James, cited, 62.
- Madison, convention at, 6, 10-11, 175; the capital, 33; location, 120, 127, 263; Supreme Court at, 649; population 1847, 350; clergyman of, 183; commissioners, 184; newspapers, 186; printing in, 184, 198, 206-208, 215-216; apportionment, 808, 844.
- Madison *Democrat*, Whig organ, 17-18, 24; printing of, 193.
- Madison *Express*, excerpts from, 193-195, 202, 204, 213-214, 223, 237, 242, 245, 261, 362-367, 383-385, 439, 486, 490, 497, 503, 506, 508, 511, 623, 628, 634, 747, 881.
- Madison *Wisconsin Argus*, editors of, XII; excerpts from, 1-3, 11-73; proprietors of, 178, 207; report in, 245, 333, 348; printing granted to, 193, 324, 326, 853, 855-857, 878, 881; charges of, 868; copies furnished, 876.
- Magna Charta, reference to, 748.
- Magnolia, population 1847, 353; representation, 810, 845.
- Maine, land prices in, 149; area of, 266.
- Mallo, Daniel, printer, 216.
- Manchester, population 1847, 350.
- Manitowoc, population 1847, 352.
- Manitowoc County, delegate, 5, 923; abstract of votes, 191; population, 352, 355-356; on judicial circuits, 248, 711, 730, 732; apportionment for, 521-522, 600, 602, 604, 616, 628, 630-632, 807-808, 846.
- Marbury v. Madison, cited, 661.
- Marquette County, delegate, 5, 930; abstract of votes, 191; population, 352, 355-356; on judicial circuit, 248, 682, 711, 730, 732; apportionment for, 522, 807, 809; petition on preëmption, 616.
- Married women's property rights. See Women.
- Martin, Morgan L., delegate, 176; elected president, 177, 621; document submitted to, 191; offers amendments, 691, 738; remarks on foreigners, 276; on bill of rights, 280, 284-285, 289, 290, 292-294, 332; on internal improvements, 454, 472, 582-583; on banking, 503, 505; on schools, 563; on public lands, 590; on judiciary, 609-610, 633, 658, 677, 680-685; on rules, 621; on admission, 827; on county division, 871-872; final address, 883; remuneration for, 876; resolution of thanks for, 882; sketch, 900.
- Maryland, area of, 266; veto in, 272.
- Massachusetts, citations on, 154-155; area of, 266; constitution, 272; convention, 434, 667; judiciary reports, 657, 687; precedents from, 384, 427, 445, 447.
- Master in chancery, office abolished, 689-690.
- Matts, P. W., guarantor, 207.
- Maxson, Dr. S. G., lecturer, 241.
- Menominee Indians, lands of, 229, 245.
- Menominee River, boundary, 21, 24, 120, 130, 461, 467, 793.
- Menomonee, population 1847, 355; representation, 811.
- Mequon, population 1847, 354; representation, 811.
- Metomen, population 1847, 351; representation, 808.
- Mexican War, resolution on, 743; adopted, 813.
- Miami River, canal into, 138; on boundary, 745.
- Michaelbane, Barney, vote of, 551.
- Michigan, boundaries, 21-22, 119, 124, 130, 229, 455, 461-462, 467-468, 474, 478-479, 746, 781, 784, 786, 793, 825, 829; size, 266; admission of, 122, 375, 380, 476, 479, 787,

- 789, 823; internal improvements in, 419-420, 581-582; precedents from, 381, 496, 501, 543, 615.
- Michigan Central Railway**, conditions, 582.
- Michigan Lake**, as a boundary, 21, 23-24, 119-120, 123, 130, 262, 461-463, 467, 745, 784, 788, 793; inhabitants west of, 828; jurisdiction over, 24; canal from, 135, 160-161, 165, 170-171, 196.
- Michigan-Illinois Canal**, construction of, 158.
- Middle Island**, in Lake of the Desert, 120, 130, 461, 467, 793.
- Militia**, committee on, 196, 206; article on, 283, 405-406, 726; debate on, 400-401, 409-410.
- Millcreek**, population 1847, 351.
- Miller**, A. G., judge, 668, 682.
- Mills**, Simeon, guarantor, 207.
- Millville**, population 1847, 351; representation, 809, 844.
- Milton**, population 1847, 353; representation, 810, 845.
- Milward**, Daisy, aid acknowledged, VIII.
- Milwaukee**, Constitutional party at, 16; capitalists at, 69; court at, 166, 172; population 1847, 352-353; senators, 432; academy at, 578; railroad at, 584; municipal court, 611-612, 682-683; harbor, 740; newspapers, 770; public opinion, 773; apportionment, 807-810.
- Milwaukee (town)**, population 1847, 353; representation, 807.
- Milwaukee County**, delegates, 4, 88, 913-916; instructions for, 624; abstract of votes, 191; population, 352-353, 355-356; on judicial circuit, 247, 682, 711, 730, 732; apportionment, 808, 810, 846; senators from, 432, 435, 522; court at, 613; petition from, 469; opinion on negro suffrage, 387; on exemption, 803.
- Milwaukee-Rock River Canal**, project abandoned, 145, 584. See also Rock River.
- Milwaukee Sentinel**, editor, XIII; policy, 17; excerpt from, 323.
- Milwaukee Wisconsin Banner**, constitution translated for, 834.
- Mineral Point**, population 1847, 351; representation, 809.
- Minnesota**, territory of, 124, 127, 244, 262, 474-475.
- Miscellaneous provisions**. See Schedule and Miscellaneous.
- Mississippi (state)**, area of, 266; debt of, 420, 694.
- Mississippi River**, importance of, 123, 127; route to, 136, 157, 263, 458, 584; jurisdiction on, 301; as a boundary, 120, 130, 159, 225, 242, 262, 264-266, 455-456, 459, 461-462, 467, 474-475, 745, 788, 793, 850.
- Missouri**, size of, 120, 266; boundary, 463, 790; admission of, 3, 478; precedents from, 59-60, 272-273.
- Monroe**, population 1847, 351.
- Montreal River**, boundary, 264, 266, 455, 461, 467, 474, 793.
- Montrose**, representation, 808. See also Verona.
- Morse**, Isaac E., discussion by, 139-141.
- Mott**, William M., fireman, 175, 178.
- Mountain Island**, boundary point, 120, 130, 264, 266, 455, 474.
- Mount Pleasant**, population 1847, 353; representation, 807, 810, 842, 845, 864.
- Mount Sterling**, population 1847, 350.
- Mower**, Timothy Jr., candidate for delegate, 176.
- Mukwonago**, population 1847, 355; representation, 811.
- Mulford**, "Cyrus" A. See Mulford, Ezra.

- Mulford, Ezra A., delegate, 176-177; committee member, 206; absent, 469, 628, 780; motion, 205; sketch, 926.
- Municipal corporations, discussed, 738-740.
- Municipal courts, discussed, 611-612, 682-683.
- Murray, Lord Charles, land owner, 360, 373.
- Muscoda, population 1847, 351; representation, 809, 844.
- Muskego, population 1847, 355; representation, 811.
- Mygatt, W., newspaper account, 869.
- NATIONAL Reform Association, principles of, 24-26.
- Neenah, population 1847, 355.
- Negroes, citizenship for, 245; suffrage, 86, 91-92, 95-99; Liberty party upholds, 95; popular vote on, VII, 184, 191-192; resolution on, 382, 397-398; debated, 366-367, 383-389, 398-400.
- New Berlin, population 1847, 354; representation, 863.
- New England, judiciary system, 656, 659, 686; precedents from, 790.
- New Hampshire, area of, 266.
- New Jersey, area of, 266; veto in, 272.
- New Lisbon, population 1847, 351; representation, 809, 811, 844; in amendment, 863.
- New York (city), anti-rent difficulty, 36; parchment in, 443; Tammany Hall, 749; representation, 850.
- New York (state), size, 120, 128, 264, 266; importance of, 106, 266; reforms in, 37, 78-79, 326, 734; constitution of, 59-60, 362, 384, 438, 641, 656, 739-740; conventions, 220-221, 644-645; statistics of, 448; precedents from, XII, 253, 271, 317, 735, 753, 762, 815; judiciary system, 656-657, 662, 686-688, 697, 705, 721; banking system, 496, 513-514, 525-526, 537-538; bonds of, 517; internal improvements in, 417, 419, 581-584; apportionment, 622.
- Newark, population 1847, 353; representation, 810, 845.
- Newspapers, influence of, XI-XIII; to report to convention, 6; distributed in convention, 183, 186-187, 210-212, 852-853, 867, 875-877; in foreign languages, 834, 852, 865-866. See also Printing, and the several journals.
- Nichols, Charles M., delegate, 176; committee member, 215, 645, 716; absent, 722, 812, 872; motion of, 415; offers amendment, 844; sketch, 903.
- Nicollet, Joseph N., map by, 120, 130, 264, 266, 461, 467, 793.
- Nisi prius system. See Judiciary.
- Nordlyset, constitution translated for, 834, 865.
- North Bend, population 1847, 354; representation, 811.
- North Carolina, area of, 266; veto in, 272.
- Northwest Territory, Virginia grant, 129; importance of, 89, 151; states of, 132-133, 262, 266, 461, 467, 476, 823, 826-827; rights in, 368.
- Norton, Timothy, vote of, 550.
- Norway, population 1847, 353; representation, 807, 810, 842, 845, 864.
- Norwegians, constitution in their language, 834, 865-866.
- OAK Creek, population 1847, 353; representation, 807, 810.
- Oakfield, population 1847, 351; representation, 808.
- Oakland, population 1847, 352; representation, 809.

- Oath of office, required, 305, 391-392.
- O'Connor, Charles, jurist, 701.
- O'Connor, John, delegate, 176; committee member, 523, 812; seat contested, 183, 473, 550-551, 592; allowed expenses, 678-679, 813-814, 843; absent, 620; asks leave, 722, 733; motion, 319, 575, 836, 870; offers amendment, 731, 733; remarks on taxation, 243, 252; on governor, 274; on amendments, 320, 337, 733-734; on legislature, 438-439; on schools, 580; on printing, 593; sketch, 912.
- Oconomowoc, population 1847, 355; representation, 811.
- Officers of convention, 177-178, 194-196, 861.
- Officers of state, discussion of, 27-30, 76, 115; duties of, 230, 282, 284, 559-562; terms of, 28, 841, 874; election and appointment of, 845-846, 863. See also Executive, and the several officials.
- Ogden, Abram, doorkeeper, 853.
- Ogden, Thomas L., jurist, 784, 790.
- Ohio, size, 126, 266; importance of, 106; admission of, 131, 162, 461, 467, 476, 824-825; boundary, 22, 123, 132, 152, 479, 746, 786, 827, 829; canal in, 138; constitution of, 361, 363-364, 375; precedents from, 272, 446; stocks of, 517; opposes admission of Wisconsin, 826.
- Ohio Canal, land grant for, 138.
- Ojibway Indians, habitat, 123.
- Ordinance of 1787, excerpt from, 22, 62, 89, 361, 678, 744-748, 780, 782-783, 825; query on, 105; terms of, 121-122, 124, 126, 132, 143, 265, 279, 374, 417, 458-459, 462; disregard of, 133, 262, 827; states designated in, 266; power under, 370, 476, 478-479, 827; importance of, 784, 786-791.
- Oregon, representation, 808; and assembly district, 844. See also Rutland.
- Oregon (state), railroad to, 37; constitution of, 142.
- Organic act. See Enabling Act.
- Ottawa, population 1847, 355; representation, 811.
- Ottawa Indians, habitat, 123.
- PALMYRA, population 1847, 352; representation, 809.
- Parchment for constitution, 392, 442-443, 474.
- Pardon, granted by governor, 218.
- Paris, population 1847, 353; representation, 807, 810, 842, 845, 863-864.
- Parsons, Judge Theophilus, opinion, 661, 667.
- Patch Grove, population 1847, 351; representation, 809, 844.
- Patriot*. See *Prairie du Chien*.
- Paxson, Frederic L., on constitution, VII.
- Peck, S. B., opinion of, 91-95.
- Peddlers Creek, representation, 809.
- Penman, Rev. John, prayer by, 226, 240, 297, 300, 407, 423, 519, 540, 616, 643, 807, 852; holds services, 679; compensation for, 870.
- Pennsylvania, size, 120, 264, 266; importance of, 106, 266; land prices in, 149; boundary, 462, 745; precedents from, 666.
- Pentony, Patrick, delegate, 176; committee member, 215; remarks on separate offices, 229, 251; on schools, 581; sketch, 926-927.
- Pepin Lake, boundary, 475.
- Percussion, population 1847, 352; representation, 809.
- Pewaukee, population 1847, 355; representation, 811.
- Pike, population, 1847, 353; representation, 807, 810, 842, 845, 863-864.

- Pilling, Abraham, vote of, 551.
- Platt, Alonzo, proposal of, 379.
- Platteville, population 1847, 351; representation, 809, 843.
- Pleasant Prairie, population 1847, 353; representation, 807, 810, 842, 845, 863-864.
- Pleasant Valley (Columbia County), population 1847, 350.
- Pleasant Valley (Grant County), population, 1847, 351; representation, 809, 844.
- Plover, population 1847, 353.
- Political year, determined, 735-736; inexpediency of, 852; election day, 837.
- Polk, population 1847, 354; representation, 811.
- Population, in 1847, 2; increase of, VII, 2, 345; estimated, 682. See also Census.
- Portage. See Winnebago Portage.
- Portage County, delegates of, 5, 916; size, 871; census to be taken, 9; population, 353, 355-356; abstract of votes, 191; state senator, 115; on judicial circuit, 248, 682, 711, 730, 732; apportionment, 522, 602, 807, 810; Indian lands in, 737.
- Porter, population 1847, 353; representation, 810, 845.
- Porters Grove, population 1847, 352; representation, 809.
- Portland, population 1847, 351; representation, 808.
- Port Washington, population 1847, 354; representation, 811.
- Post Vincents. See Vincennes.
- Postage, for convention members, 186, 211.
- Potosi, population 1847, 351; representation, 809, 844.
- Potosi *Republican*, editor, XIII; excerpts from, 107-112.
- Prairie, population 1847, 352; representation, 809, 864.
- Prairie du Chien, location, 127, 263; population 1847, 350.
- Prairie du Chien *Patriot*, editor, XIII; excerpts from, 113-115.
- Prairie La Crosse, population 1847, 350.
- Preamble, cited in Congress, 164, 170; committee on, 196, 206; article on submitted, 227; debate on, 275, 284; engrossed, 334.
- Preemption, rights, 2, 160-161, 165, 171; safe guarded, 162, 197; debated, 616-617; for Fox River grant, 741-742; resolution on, 836.
- Prentiss, Theodore, in first convention, VI; delegate, 176; committee member, 184, 206, 793; report, 245, 643, 715, 726, 743; presides, 316, 334; absent, 620, 695, 780, 812; query, 201; remarks on credentials, 175-177; on land grants, 196-197; on printing, 200; on schedule, 297, 391-392; on suffrage, 393-395, 398; on districting, 430, 432; on banking, 542, 544-547; on boundaries, 551, 782, 785, 787; on public lands, 588-590, 835; on exemption, 593, 774; on Congressional districts, 850; sketch, 911.
- Printing, resolutions on, 178-179, 183-184, 192-193, 201, 204-205, 208-209, 212, 223, 229, 241, 306, 320, 326, 333-334, 337, 407, 425, 473, 493, 853, 870; proposals for, 206-208; petition on, 215-216; committee for, 198-199, 593, 867, 877; debate on, 182, 193-194, 199-204, 210, 213, 216-217, 242-243, 245, 320-333, 407, 423-425, 853-860; article on, 728; amendments, 860-861; estimated cost, 593-594, 852, 877-881; refusal to pay, 867. See also Newspapers.
- Probate judges, amendment on, 696.

- Property qualification, for suffrage, 678.
- Public debt, should be limited, 40-41, 76; committee on, 196, 206. See also Finance.
- Public improvements. See Internal Improvements.
- Public instruction, superintendent of, 219, 230, 559-562, 565-567. See also Education, and Schools.
- Public lands, granted by Congress, 2, 134, 137-138, 140-143, 145, 582, 589, 741; sales of, 3, 149-150, 154-156, 162-163, 284; cost of, 149, 156-157, 166, 171, 197; resolution on, 594-595, 834, 862-863; debate on, 588-591, 834-36. See also Internal Improvements, and School Lands.
- Public property, committee on, 196, 206, 443; article on, 301, 405, 415, 425, 727, 873; superintendent of, 10, 780; accounts of, 519-521.
- Pyncheon, William M., guarantor, 207.
- QUAIFE, M. M., editor, V-VIII.
- Quarles, Capt. Augustus, in Mexican War, 743.
- RACINE, population 1847, 353; senator at, 432; academy at, 578; representation, 807, 810, 842, 845, 864.
- Racine *Advocate*, excerpt from, 323, 329.
- Racine County, delegates, 4, 660, 916-919; Democrats meet in, 60-61; Liberty party of, 62; abstract of votes, 191; population, 353, 355-356, 432; on judicial circuit, 247, 682, 711, 730, 732; senators from, 432, 435, 522; opinions of, 387, 769, 804-805; petitions from, 492, 593, 713, 793, 804; school fund, 445; apportionment for, 600, 606, 619, 622, 626-627, 807, 810, 842, 844-846, 863-864.
- Ramsey, Alexander D., delegate, 176; committee member, 306; remarks on exemption, 473; on legislature, 493; on schools, 570; sketch, 906.
- Randall, Douglass, doorkeeper, 175, 178, 852-853.
- Rasdall, Abel, guarantor, 208.
- Rathbone, Gilbert, petitioner, 713.
- Rathbone, Updike, petitioner, 713.
- Raymond, Rev. —, prayer by, 215.
- Raymond, population 1847, 353, 807, 810, 842, 845, 864.
- Read, Rev. H. W., prayer by, 191, 245, 282, 391, 440, 492, 564, 593, 678, 743, 833, 882; permission to preach, 205, 812; compensation for, 870.
- Ream, Robert L., assistant secretary, 178; resolution of thanks to, 882.
- Reed, Harrison, delegate, 176; committee member, 206; presents petition, 564; offers resolution, 882; absent, 779; remarks on newspapers, 183, 186, 876; on reporting, 209, 220-221, 327, 332; on printing, 213, 859; on legislature, 426-428, 470; on boundary, 464, 476-477, 479, 785, 830; on expenses, 519; on internal improvements, 583; on public lands, 594, 616, 741; on apportionment, 600; on preëemption, 616-17; on judiciary, 692-693; on Indian lands, 738; on exemptions, 770-814; on county division, 871-872; votes for, 861, 867-868; sketch, 930.
- Referendum, on amending constitution, 740; on adopting constitution, 197, 423, 441; on exemption, 747-750, 755-758, 763, 767, 771-772, 776-777, 794, 820; on banks and banking, 537-538; on negro suffrage, VII.

- 445; apportionment for, 500, 505.
 523, 718, 793, 804; school fund.
 769, 804-805; petitions from, 482.
 442, 486, 523; opinions of, 587.
 682, 711, 730, 732; senators from,
 356, 432; on judicial circuit, 247,
 votes, 181; population, 353, 355.
 Liberty party of, 62; abstract of
 619; Democrats meet in, 60-61.
 Racine County, delegates, 4, 560, 916-
 920.
 Racine Advocates, excerpts from, 323.
 845, 864.
 representation, 807, 810, 842,
 for at, 482; academy at, 578;
 Racine, population 1847, 353; sena-
 845, 864.
 War, 748.
 Quarles, M. M., editor, V-VIII.
 Quarles, Cape, arguments in Mexican
 297.
 Psycheson, William M., translator,
 297.
 Public property, committee on, 195,
 208, 443; article on, 301, 405,
 416, 422, 727, 873; expenditures-
 out of, 10, 780; accounts of, 519-
 521.
 Psycheson, William M., translator,
 297.
 School lands, also Internal Improvements, and
 debate on, 588-591, 524-26. See
 action on, 594-595, 834, 862-863;
 149, 153-157, 160, 171, 197; reso-
 154-156, 162-163, 284; cost of,
 589, 741; sales of, 3, 143-150,
 136, 137-138, 140-142, 145, 592,
 Public lands, granted by Congress, 2,
 also Education, and Schools.
 219, 230, 550-562, 565-567. See
 Public instruction, superintendents of,
 Improvements.
 Public improvements. See Internal
 also Finance.
 75; committee on, 195, 208. See
 Public debt, should be limited, 40-41,
 678.
 Property qualification, for suffrage,
 678.
 908.
 518, 523, 525-527, 807, 810, 842,
 844-846, 863-864.
 Ramsay, Alexander D., delegate, 179;
 committee member, 308; remarks
 on exemption, 473; on legisla-
 tion, 423; on schools, 570; sketch,
 908.
 Randall, Douglass, bookkeeper, 175,
 176, 222-223.
 Randall, Abel, quartermaster, 208;
 Rathbone, Gilbert, petitioner, 713.
 Rathbone, Ulysses, petitioner, 713.
 Raymond, Hor., prayer by, 216.
 Raymond, population 1847, 353, 807,
 810, 845, 846, 864.
 Read, Rev. H. W., prayer by, 191,
 246, 282, 301, 446, 492, 504, 509,
 678, 743, 835, 862; permission to
 preach, 4, 205, 812; compensation
 for, 570.
 Ream, Robert L., assistant secretary,
 178; resolution of thanks to, 522.
 Reed, Harrison, delegate, 176; com-
 mittee member, 208; presents
 petition, 447; offers resolution,
 473, 474, 719; remarks on
 newspaper, 183, 185, 879; on re-
 porting, 306, 350-351, 357, 359,
 on petition, 318, 802; on legisla-
 tion, 423-425, 470; on boundary,
 484, 476-477, 479, 785, 830; on
 expenses, 519; on internal im-
 provements, 523; on public lands,
 594, 616, 741; on apportionment,
 600; on prescription, 616-17; on
 judiciary, 692-693; on Indian
 lands, 728; on exemption, 770-
 814; on county division, 871-872;
 votes for, 861, 867-868; sketch,
 908.
 Reichenbun, on amending constitu-
 tion, 740; on adopting constitution,
 187, 423, 441; on exemption, 747-
 756, 758-762, 763, 767, 771-773,
 776-777, 794, 820; on banks and
 banking, 827-828; on negro suf-
 frage, VII.

- Removal power, in governor, 30.
- Representation. See Apportionment.
- Republican*. See Potosi.
- Republican party, beginnings, XII.
- Revision committee, of convention,
180, 192; reports of, 320, 337,
392, 546, 713, 726, 830, 833, 836,
843, 852, 862, 867, 872-873, 875,
882; instructions for, 834.
- Revision of statutes, provided for,
697; debated, 697-708.
- Reymert, James D., delegate, 176;
committee member, 206; news-
paper publisher, 834, 865; ac-
count, 869; presents petition,
793; offers resolution, 716, 743;
motions, 676, 793, 797, 842, 851;
remarks on suffrage, 318, 381,
383, 387, 393-394; sketch, 918.
- Rhode Island, area of, 266; veto in,
272; suffrage in, 384; schools
in, 445, 447.
- Richardson, William, delegate, 176;
committee member, 215, 266, 283,
334, 408, 423, 441, 469, 643, 780,
852, 861, 866; reports, 743, 812,
843; motions, 205, 296, 335, 347,
406, 628, 722, 741, 758, 780;
withdrawn, 742; remarks, 177,
183, 194; on exemption, 210, 222,
250, 267, 295, 772; on education,
219, 232, 553, 573, 616; on execu-
tive, 254, 257; on bill of rights,
315; on citizenship, 356, 397; on
suffrage, 387; on taxation, 413;
on legislature, 427, 469, 493, 720;
on districting, 429, 434, 631; on
boundary, 465, 482, 785, 825-826;
on banking, 540, 544, 564; on in-
ternal improvements, 591; on ju-
diciary, 613; on county seat, 839;
on apportionment, 844; sketch,
906-907.
- Richfield, population 1847, 354; rep-
resentation 811.
- Richland County, delegate, 5, 909;
size of, 871; census to be taken,
9; population 1847, 351; assembly-
man, 115; abstract of votes, 191;
attached to Iowa County, 248,
351; representation, 522, 807,
809.
- Richmond, population 1847, 354; rep-
resentation, 811, 863.
- Rights. See Bill of Rights.
- Rivers and harbors, improvement,
740. See also Internal Improve-
ments.
- Rochester, population 1847, 353; repre-
sentation, 807, 810, 842, 845, 864.
- Rock, population 1847, 353; represen-
tation, 810, 845.
- Rock County, delegates, 4, 660, 919-
922; abstract of votes, 191; pop-
ulation, 353, 355-356, 432; sen-
ators from, 435, 522; petition
from, 616; on judicial circuit,
247, 682, 711, 730, 732; appor-
tionment, 553, 725, 807, 810, 845-
846; attitude on negro suffrage,
387.
- Rock River, canal to, 135, 160-161,
165, 170-171, 196; land grant for,
141; abandoned, 145, 584.
- Rock River Pilot*. See Watertown.
- Rockwell, John A., Congressman, 141;
offers amendment, 142, 161-162;
opinion of, 145-146, 148; assault
by, 147.
- Rome, population 1847, 350; repre-
sentation, 808.
- Root, Eleazer, delegate, 176; commit-
tee member, 206, 251; presides,
741; absent, 830; offers resolution,
875; remarks, 337, 356; on suf-
frage, 381; on schools, 450, 559,
563, 567, 577; on school lands,
554, 556; on school age, 574; on
newspapers, 876; sketch, 936.
- Rosendale, population 1847, 351; rep-
resentation, 808.
- Rountree, John H., delegate, 176;
committee member, 186, 206;
presides, 232, 244, 252; absent,

- 620, 695; offers resolution, 862; motion, 175, 177, 780, 790, 797, 843; presents certificate, 206; census, 724; remarks on printing, 203; on suffrage, 342, 383, 399-400; on citizenship, 376; on taxation, 402; on boundary, 461, 464, 466, 782, 824-825, 827; on banking, 487, 526-527; on apportionment, 552-553, 724-726; on Congressional districts, 846-850; on school funds, 568; on judiciary, 636-637; on legislative officers, 736-737; on exemption, 794-796; sketch, 907.
- Rubicon, population 1847, 351; representation, 808.
- Ruggles, J. D., guarantor, 207.
- Rules. See Constitutional Convention.
- Rum River, as boundary, 115, 123, 126-128, 143, 147, 152, 159, 225, 242, 263-264, 458, 466.
- Rushford, population 1847, 355.
- Rutland, and Oregon, population 1847, 350; representation, 808.
- Ryan, Edward G., in first convention, VII.
- St. ANTHONY Falls, water power of, 458; near boundary, 789, 847.
- St. Croix County, delegate, 5, 923; distance, 120, 457; census to be taken, 9, 873; population, 343-349, 354, 356; abstract of votes, 191; on judicial circuit, 248, 711, 730, 732; apportionment, 115, 521-522, 552, 601, 603-604, 616, 630, 807-808; citizens, 475; and academy fund, 578.
- St. Croix Falls, resident, 125.
- St. Croix River, as boundary, 21, 119, 121, 124, 126-129, 131, 143, 147, 152, 159, 163, 262, 264-265, 467, 793.
- St. Croix Valley, settlements of, 123, 158, 160, 263, 456, 458-461, 464, 474, 480, 828.
- St. Louis River, as boundary, 21, 159, 225, 241, 265, 458, 461, 467, 477, 789, 793.
- St. Paul *Pioneer Press*, editor, XIII.
- Salaries, of delegates, 6; of messenger, 192; of governor, 218, 255-256, 652-653; of lieutenant governor, 283; of legislators, 33, 421, 427, 436-437; of judges, 248, 635, 639, 653; of secretaries, 454, 469, 492; debate on, 252-253, 255-258, 268.
- Salem, population 1847, 353; letter from read, 768; representation, 807, 810, 842, 845, 863-864.
- Sanders, Horace T., delegate, 176; committee member, 184, 206; presides, 483, 497, 505, 515; presents petition, 593, 793; offers amendment, 712, 719; asks leave, 575; calls for division, 842; motion, 335, 480, 585, 623, 674, 696, 778, 793, 867; remarks, 177, 183, 187, 620; on printing, 193, 299, 853-855; on expenses, 212, 519-521, 680; on governor, 253; on foreigners, 277-278, 315, 317-318, 368; on exemption, 290, 797, 800, 821; on internal improvements, 415-416, 418, 420, 454, 583, 587; on legislature, 437, 469-470; on convention journal, 441; on engrossment, 443; on banking, 524-525, 527, 531-532, 536, 538, 541, 543, 546; on school lands, 553-555; on education, 569-570, 574, 576, 578-580; on boundaries, 586, 784-785, 787, 823-824, 830; on doorkeeper, 596, 618; on apportionment, 607, 622, 626-627, 725; on corporations, 734-735; on judiciary, 674-675, 721, 731; on county division, 871; votes for, 861, 867; sketch, 918-919.
- Sauk County, delegate, 5, 916; popu-

- lation, 354-356; senator from, 115; abstract of votes, 191; on judicial circuit, 248, 682, 711, 730, 732; apportionment for, 522-523, 807, 810.
- Sauk Prairie, population 1847, 354.
- Sault Ste. Marie, on boundary, 21, 23.
- Sawyer, William, boundary opinion, 124.
- Say, J. B., *Political Economy*, 505.
- Scagel, George Jr., delegate, 176; committee member, 206, 453; asks leave, 678, 722; motion to adjourn, 722; remarks on suffrage, 316, 398; on officers' salaries, 407, 423, 454; on districting, 429; on banking, 548; on school age, 571-572; sketch, 929.
- Schafer, Joseph, introduction, XI-XIII.
- Schedule and Miscellaneous provisions, committee on, 196, 206, 245, 297, 836; resolution of, 229-230, 250, 252, 284, 392, 596; article on, 391-392, 806, 831, 846, 864; report, 643, 715, 726, 743, 873-874; amendments, 837, 841, 863, 867, 873, 875-876; article engrossed, 861, 866; adopted, 870.
- Schoeffer, Moritz, delegate, 176; committee member, 206; newspaper publisher, 834; absent, 722; remarks on foreign language, 242, 252; on foreigners, 277, 315, 318, 396, 865; on convention journal, 335; on suffrage, 395; on school age, 574; account, 869; sketch, 915-916.
- School funds, popular discussion of, 3, 70, 72, 115, 136, 139, 141-142, 145, 150, 160, 162, 170; resolutions on, 197, 407-408; discussed, 392, 408, 444-445, 447-448, 567-570; committee on, 196, 206, 219-220, 229, 232, 241, 243; debate on, 553-558, 593, 713. See also Education.
- Schools, public discussion of, 70; non-sectarian, 75, 570; foreign languages in, 243, 252; taxation of, 243; colored children in, 570; age of children, 571-574; length of term, 576. See also Academies, Education, and School Funds.
- Secor, Theodore, delegate, 176; committee member, 215, 869-870, 877; absent, 469, 695; presents petition, 593; motions, 175, 190, 389, 391, 870; remarks on legislature, 439; votes for, 861, 867; sketch, 919.
- Secretary of State. See Executive.
- Senate (state). See Legislature.
- Senators, United States, equal representation of, 265-266, 432; election of, 678, 715, 852. See also Boundaries.
- Sentinel*. See Milwaukee.
- Seven Mile Creek, population 1847, 351; representation, 808.
- Seymour, William N., guarantor, 205.
- Sharon, population 1847, 354; representation, 811, 863.
- Sheboygan County, delegate, 5, 923; population, 354-356; abstract of votes, 191; on judicial circuit, 248, 711, 730, 732; apportionment for, 521, 523, 622, 807, 810, 846.
- Shields, James M., guarantor, 207.
- Sholes, C. Latham, editor of *Southport Telegraph*, XI-XII, 805; newspaper account, 869.
- Shullsburg, population 1847, 352; illegal election, 550-551, 813; representation, 809, 864.
- Slavery, popular discussion of, 93, 95; and bill of rights, 219, 230; debate on, 230-232. See also Negroes.
- Smelsers Grove, population 1847, 351; representation, 809, 843.

- Smith, Adam, *Wealth of Nations*, cited, 505.
- Smith, C. B., printer, 216.
- Smith, Caleb B., Congressman from Indiana, 119; on boundary, 125-127; on admission of Wisconsin, 130-131; addresses committee, 151-158; amendment of, 159-160, 164; mention price of land, 167, 169.
- Smith, Erasmus D., jurist, 687.
- Smith, John Y., proprietor *Wisconsin Argus*, XI-XII, 178, 207, 209, 425. See also Tenney, Smith and Holt.
- Smith, Robert, Congressman from Illinois, 119-121; on boundary, 123, 125, 128, 141, 147-148, 151, 158; motion of, 130-131.
- Smith, Gen. William R., on militia, 401.
- Sneeden, Daniel B., guarantor, 207.
- South Carolina, difficulty in, 36; area of, 266; veto in, 272.
- South Island, in Lake of the Desert, 120, 130, 461, 467, 793.
- Southport (Kenosha), Liberty convention at, 62; population 1847, 353; senator at, 432; newspapers, 770; representation, 807, 810, 842, 845, 863-864.
- Southport *Telegraph*, editor, XI-XII; excerpts from, 50-52, 55-73, 805; mentioned, 54.
- Spencer, Ambrose, jurist, 686.
- Spring Prairie, population 1847, 354; representation, 811, 863.
- Spring Valley, population 1847, 353; representation, 810, 845.
- Springfield, representation, 808. See also Cross Plains.
- Stanton, Frederick P., Congressman, 163.
- State debt. See Public Debt.
- State officers. See Officers.
- State printing. See Printing.
- State seal, resolution on, 841.
- Stationery, resolution concerning, 423, 492, 519, 645; debated, 679-680; furnished, 10, 492, 519, 833.
- Statistics, summary for second constitutional convention, 931.
- Statutes. See Revision of Statutes.
- Stedman, Silas, delegate, 176; committee member, 196, 206; absent, 334; sketch, 923-924.
- Stevens Point, population 1847, 353.
- Stockbridge, population 1847, 350.
- Strong, Marshall M., resigns from first convention, 766.
- Strong, Moses M., of Iowa, 397; on population, 465; petition from, 521.
- Suffrage, public discussion of, 82, 95, 111, 114; committee on, 196, 206, 212, 230, 334; article on, 245-246, 408, 418; debate on, 316-319, 337-347, 356-390, 393-400; amendments, 334-336, 381-382, 389, 393-394, 396, 398, 792; adopted, 793. See also Foreigners, and Negroes.
- Sugar Creek, population 1847, 354; representation, 811, 863.
- Sugar River, population 1847, 351.
- Sullivan, population 1847, 352; representation, 809.
- Summit, population 1847, 355; representation, 811.
- Sun Prairie and Windsor, population 1847, 350; representation, 808.
- Superior Lake, tributaries of, 124; distance from Madison, 127, 263; on boundary, 21, 264-266, 457, 460-461, 467, 475, 480, 789; settlements on, 455, 459; copper mines, 478.
- Supreme court (state), discussion of, 33, 70, 72; election of judges, 214, 640, 652, 693-694, 716; terms of judges, 634-642, 695-696; separate court proposed, 645, 676, 730-732; rejected, 677; debate on, 645-677, 680-692; article on,

- 708-712; clerk of, 167, 172. See also Judiciary.
- Supreme court (U. S.), boundary dispute to be referred to, 462-463, 467-468, 478-479, 827; analogy from, 661-667, 686.
- Supreme court commissioners, rejected, 674-675.
- Sutherland, Thomas W., guarantor, 208.
- TADPOLES.** See Democratic Party.
- Taxation, public discussion on, 40-44; committee on, 196, 206; relation to exemption, 210, 222, 243, 250-252, 267, 413; without representation, 344-345, 360, 366; debate on, 402-405; amendments, 410; article, 727. See also Finance.
- Taycheedah, population 1847, 351; representation, 808.
- Telegraph.* See Southport.
- Tennessee, area of, 266; land prices in, 149; veto in, 272.
- Tenney, H. A., proprietor *Wisconsin Argus*, XII, 178, 193, 199, 201-202, 207, 209, 425; on journal printing, 854-856.
- Tenney, Smith and Holt, printers, 593-594; account, 852-853, 869-870, 876-877; amended account, 875; communication, 867; pay for printing, 861.
- Texas, admission of, 125; and exemption, 285, 762.
- Thompson, George, printing proposal, 207, 216.
- Thompson, Jacob, of Mississippi, 119, 161-163.
- Thompson, Smith, jurist, 686.
- Tichora, population 1847, 352.
- Tipple, Huntington, messenger, 178.
- Toledo, and Michigan boundary, 823.
- Tompkins, Gov. Daniel D., of New York, 255.
- Treadway, William W., assistant secretary pro tem, 175, 469.
- Treasurer, proposed term for, 30. See also Executive.
- Trenton, population 1847, 351; representation, 808.
- Trout Lake, in northern Wisconsin, 120, 130.
- Troy, population 1847, 354; representation, 811, 863.
- Tuck, Amos, Congressman, 121.
- Turner, Harvey G., delegate, 176; committee member, 206; absent, 780; remarks on executive, 217-219; remarks on administrative, 226; remarks on legislative, 303-305; on representation, 605; on judiciary, 660; sketch, 927.
- Turtle, population 1847, 353; representation, 810, 845.
- Tuttle, Horatio, compensation for, 596, 618, 645, 713, 716, 744, 747.
- Tweedy, John H., delegate to Congress, on boundary, 121, 123-124, 126, 142; on public lands, 142-147, 157; majority report of committee, 151; amendment agreed to, 164; boundary amendment, 159; on preëmption, 161.
- Twin Rivers, land near, 23; population 1847, 352.
- Tyler, Pres. John, veto of, 270, 272.
- UNION, population 1847, 353; representation, 810, 845.
- United States bonds, as bank security, 516-517, 541, 543-544, 547.
- United States congress. See Congress.
- United States constitution, popular discussion of, 133-134, 148, 150, 166-167, 172; precedents from, 259, 269, 272, 358, 363, 380, 440, 612, 614, 852; slavery in, 231-232; oath to support, 305.
- United States senators. See Senators.
- United States Statutes at Large*, cited, 170.

- United States supreme court. See Supreme Court.
- Utter, E. R., and F. A., newspaper account, 869.
- VAN AMRINGE, H. H., lecturer, 267, 283; cited, 24-25.
- Van Buren, Martin, on Supreme Court, 667.
- Vanderpoel, Abram, delegate, 176; committee member, 206; teller, 861; absent, 471; offers resolution, 645, 679-680; amendment, 633, 689, 697, 705, 708, 773; withdraws amendment, 774; motions, 292, 601, 615, 642, 852, 869; remarks on exemption, 250, 267, 759-763, 769, 774, 797; on suffrage, 318; on reporting, 425; on schools, 452-453, 576; on boundary, 464; on banking, 547-548; on use of hall, 564, 586; on school age, 571-574; on public lands, 589, 835; on county seat, 839; on married women's property rights, 840; sketch, 911.
- Vermont, and state rights, 106; poor land of, 154; immigrants to, 155; area of, 266; precedents from, 272, 384.
- Vernon, population 1847, 354; representation, 811.
- Verona and Montrose, population 1847, 350; representation, 808.
- Veto, debated, 253-255, 257, 268-273; article amended, 282.
- Vieux Desert Lac. See Desert Lake.
- Vincennes (Ind.), on boundary, 462, 745.
- Vinton, Samuel F., Congressman, on boundary, 121, 124, 126; offers amendment, 162.
- Virginia, ceded territory, 105-106, 122, 129, 462, 745, 784, 788-789; importance of, 106; boundary, 152; area, 266; precedents from, 272, 666.
- Volksfreund*, constitution translated for, 865-866.
- WABASH-ERIE Canal, land grant, 138, 156-157.
- Wabash River, canal into, 138; boundary, 462, 745.
- Waggoner, Henry, attorney fees, 813-814.
- Wakeley, Charles T., printer, 216.
- Walker, Isaac P., speaker, 10.
- Walling, Frederick S., secretary, resolution of thanks for, 882.
- Walworth, population 1847, 354; representation, 811, 863.
- Walworth County, delegates, 4, 660, 924-926; abstract of votes, 191; population, 354-356, 432, 724; on judicial circuit, 247, 682, 711, 730, 732; apportionment, 435, 522-523, 553, 598, 606, 619, 630, 725-726, 807, 811, 846, 863; position on negro suffrage, 387-388; petition from, 715; contested county seat, 838.
- Ward, Joseph, delegate, 176; committee member, 206, 245, 645, 726; presents petition, 469, 616; absent, 620, 722, 780; sketch, 909.
- Warden, Allen, delegate, 176, 550; committee member, 206, 299, 645; absent, 471, 586, 722; motion to adjourn, 229, 243; census report, 348-349; remarks on schools, 570; sketch, 912-913.
- Warren, population 1847, 354; representation, 811.
- Washington, George, cabinet of, 424.
- Washington (D. C.), *Congressional Globe*, selections from, 119-172.
- Washington County, delegates, 5, 660, 926-927; abstract of votes, 191; population, 354-356, 432; on judicial circuit, 248, 682, 711, 730, 732; apportionment, 522-523, 598, 606, 724-726, 807, 811, 846,

- 848; county seat controversy, 838.
- Waterloo (Grant County), population 1847, 351; representation, 809, 844.
- Waterloo (Jefferson County), population 1847, 352; representation, 809.
- Watertown, population 1847, 352; newspapers of, 770; representation, 809.
- Watertown *Rock River Pilot*, editor, XII; excerpts from, 74-90, 758; position of, 15, 80.
- Waukesha, population 1847, 354; representation, 811.
- Waukesha *American Freeman*, position of, VII; excerpts from, 91-99; belief of, 99.
- Waukesha County, delegates, 4, 927-929; abstract of votes, 191; population, 354-356, 432, 724; on judicial circuit, 248, 682, 711, 730, 732; apportionment, 522-523, 596-600, 605-606, 619, 627, 629-630, 725-726, 807, 811, 844, 846; petition from, 586; position on negro suffrage, 387; in division debate, 872.
- Waupun, population 1847, 351; representation, 808.
- Wauwatosa, population 1847, 353; representation, 808, 810.
- Wayne, population 1847, 352; representation, 809, 864.
- Webster, Daniel, on property qualifications for suffrage, 434.
- Welch, John D., guarantor, 208.
- Welch, William, printing proposal, 208.
- Wells, Horatio N., president of council, 10.
- West Bend, population 1847, 354; representation, 811.
- Western Star*. See Elkhorn.
- Wheatland, population 1847, 353; opinion on exemption, 799; representation, 807, 810, 842, 845, 863-864.
- Wheeler (Phelan), James, vote of, 551.
- Wheeler, William A., delegate, 176; committee member, 194, 206; presents petitions, 300, 833; presides, 552, 596, 602; absent, 575, 722; presents account, 852; motion, 695, 791; on fireman, 192; on governor, 252; on foreigners, 314; on legislature, 421, 428; votes for, 861, 867; sketch, 903.
- Whig* (newspaper). See Fond du Lac.
- Whigs, in constitutional convention, VI, 17-18; policy of, 34, 50, 56-57, 81, 83, 86, 150, 319, 376, 431, 770, 826; caucus, 814-815; leaders, 375, 379; desire printing, 193, 878; position on banking, 527, 530-531.
- White Oak Springs, population 1847, 352; representation, 809, 864.
- Whitewater, population 1847, 354; representation, 811, 863.
- Whiton, Edward V., delegate, 176; committee member, 186, 206, 595, 715; presides, 421; not reported, VIII; motions, 175, 177, 575, 722, 863, 866; offers amendments, 711, 716, 734, 736, 740; query, 230; remarks, 187, 684, 735, 737, 835; on expenses, 184-186, 519; on convention officers, 195; on printing, 201, 204, 266, 320, 322, 332-333, 348, 854; on contested seat, 183; on fugitives, 231-232; on governor, 234, 255-256; on lieutenant governor, 257; on judiciary, 247-250, 608-610, 634, 638, 658, 675, 677, 690; on veto, 268-269, 272; on foreigners, 278; on libel, 280; on exemption, 287-288, 290-291; on public debt, 316, 414; on suffrage, 383, 396; on taxation, 401-404; on militia,

- 409; on districting, 430, 433, 600, 604-605, 628, 630; on divorce, 439; on boundary, 465, 474, 476-478; on legislature, 470-471; on internal improvements, 472, 582; on banking, 483-486, 490, 496-497, 504, 507, 511, 513, 535; on contested seat, 550-551, 564, 592; on school lands, 555-557; superintendent, 559, 562, 565; on schools, 568, 576-577; on public lands, 590; votes for, 861; sketch, 922.
- Wilkinson, William, vote of, 551.
- Williams, John K., fees, 813-814.
- Williamstown, population 1847, 351; representation, 808.
- Willow Springs, population 1847, 352; votes of, 551; representation, 809, 864.
- Wilmot Proviso, discussed, 93-94.
- Wilson, James, Congressman, boundary opinion, 122-123, 126.
- Wilson and King, newspaper account, 869.
- Windsor, representation, 808. See also Sun Prairie.
- Winnebago, population 1847, 355.
- Winnebago County, delegate, 5, 930; abstract of votes, 191; population, 348-349, 355-356; on judicial circuit, 248, 711, 730, 732; apportionment, 521, 523, 601, 807, 811; state senator from, 115; petition from, 564; position on preëemption, 616.
- Winnebago Lake, improvement of, 136, 586; county on, 601.
- Winnebago Portage, population 1847, 350.
- Wiota, population 1847, 352; Norton at, 550; representation, 809, 864.
- Wisconsin, proposal to change name, 320, 564, 715.
- Wisconsin, constitution (first), rejected, V, 17, 19, 113, 795; revision suggested, 15-17; vote on, 184, 191-192; petition on, 521, 812, 833, 852; excitement over, 778.
- Wisconsin, constitution (second), public discussion of, 55-57, 66-71, 104, 110; journal of, 173-883; referendum on, 197, 423, 441; to be engrossed and signed, 716, 743; on parchment, 882; signed, 883; ratified, VII, 11. See also Constitutional Convention.
- Wisconsin, territory, governor, 1; resources, 3; legislature of, V, VI, 2-10, 16-17, 175; land grants for, 160-161, 171; admission of, VIII, 119, 125-126, 130, 135, 147, 164-165, 170-172, 196, 206, 262, 301-302, 467, 476, 551, 823; electoral vote desired, 786, 826-827; offense against laws of, 841. See also Boundaries, Census, Division of State, Enabling Act, Internal Improvements, Public Lands.
- Wisconsin Argus*. See Madison.
- Wisconsin Banner*. See Milwaukee.
- Wisconsin-Fox River Canal, delay of, 139; land grant, 140, 143.
- Wisconsin Herald*. See Lancaster.
- Wisconsin Marine and Fire Insurance Company, banking privilege, 735.
- Wisconsin River, route via, 136; as boundary, 2, 115; land along, 299, 245, 264; land grant for improvement, 141, 157, 160-161, 165, 170, 229, 420, 862.
- Wolf River, lands on, 229, 245.
- Women, property rights of married, VII; popular discussion of, 55-56, 76, 85, 111, 113; debate in convention, 179, 286-289, 769-770; amendment offered, 840.
- Worship, motion on, 294, 313.
- Wright, Hiram A., editor, XIII; newspaper account, 869.
- Wright, Silas, United States senator, cited, 375, 381.

- 409; on districting, 430, 433, 600;
604-605, 628, 630; on divorce,
430; on boundary, 455, 474, 478-
479; on legislative, 470-471; on
internal improvements, 472, 582;
on banking, 482-486, 490, 495-497,
504, 507, 511, 513, 585; on com-
muted land, 550-551, 584, 593; on
school lands, 553-557; superin-
tendant, 559, 562, 565; on
schools, 568, 570-577; on public
lands, 580; votes for, 801;
sketch, 822.
- Williams, William, vote of, 551.
- Williams, John K., fees, 813-814.
- Williamstown, population 1847, 801;
representation, 808.
- Willow Springs, population 1847,
822; votes of, 801; representa-
tion, 809, 804.
- Winnet Provost, discussed, 93-94.
- Wilson, James, Congressman, bound-
ary opinion, 122-123, 126.
- Wilson and King, newspaper account,
809.
- Winnebago, representation, 708. See
also Sun Prairie.
- Winnebago, population 1847, 808.
- Winnebago County, delegates, 5, 930;
abstract of votes, 191; popula-
tion, 318-342, 355-356; on Indi-
an circuit, 348, 711, 730, 732;
apportionment, 621, 623, 697.
- 807, 811; state senator from,
115; petition from, 564; position
on presumption, 814.
- Winnebago Lake, improvement of,
136, 804; county on, 601.
- Winnebago Portage, population 1847,
800.
- Windsor, population 1847, 822; Norton
at, 820; representation, 809, 804.
- Wisconsin, proposal to change name,
320, 564, 718.
- Wisconsin, constitution (first), reject-
ed, V, 17, 19, 113, 195; revision
suggested, 12-17; vote on, 184
- 191-192; petition on, 681, 812,
822, 823; excitement over, 778.
- Wisconsin, constitution (second), pub-
lic discussion of, 55-57, 58-71,
104, 110; journal of, 173-283;
referendum on, 197, 423, 441;
to be engrossed and signed, 718,
743; on parchment, 822; signed,
822; ratified, VII, 11. See also
Constitutional Convention.
- Wisconsin, territory, governor, 1;
representatives, 5; legislature of, V,
VI, 8-10, 18-17, 175; land grants
for, 160-161, 177; admission of,
VIII, 119, 123-126, 130, 135, 147,
154-166, 170-172, 196, 206, 235,
304-305, 357, 478, 551, 823; elec-
tion, 559-562, 565, 568, 570-577;
total vote desired, 786, 822-827;
offense against laws of, 841. See
also Boardman, Census, Divi-
sion of State, Enabling Act, In-
ternal Improvements, Public
Lands.
- Wisconsin, Argus. See Madison.
- Wisconsin Farmer. See Milwaukee.
- Wisconsin-Fox River Canal, delay of,
120; land grant, 140, 142.
- Wisconsin, Article. See Language.
- Wisconsin, Marine and Fire Insur-
ance Company, banking privi-
lege, 737.
- Wisconsin River, route via, 130; as
boundary, 2, 115; land along,
238, 245, 264; land grant for im-
provement, 141, 157, 160-161,
165, 170, 228, 430, 802.
- Wolf River, lands on, 238, 245.
- Women, property rights of married,
VII; popular discussion of, 55,
58, 76, 82, 111, 113; debate in
convention, 179, 280-289, 769-
770; amendment of, 840.
- Worship, motion on, 234, 812.
- Wright, Hiram A., editor, XIII;
newspaper account, 809.
- Wright, Elias, United States senator,
elected, 375, 381.

Writs of court. See Judiciary.

Wyman, W. W., desires printing, 193,
201, 207; newspaper account,
869; amended account, 875.

Wyocena, population 1847, 350.

YAGER, William H., guarantor, 208.

Yellowstone, population 1847, 352;
representation, 809.

Yorkville, population 1847, 353; rep-
resentation, 807, 810, 842, 845,
864.

F902.981

INDEX

Yager, William H. Grantor, 308
Yellowstone population 1847, 303;
representation, 303
Yorkville, population 1847, 323; rep-
resentation, 307, 316, 343, 346
301

Writ of court. See Judiciary.
Wyman, W. W. business printing, 188
301, 307; newspaper, account,
188; amended account, 318
Wyocena, population 1847, 330

